
UC SOUTHERN REGIONAL LIBRARY FACILITY
D 000 000 468 1

Ex Libris
C. K. OGDEN

THE

Law of a Justice of Peace

AND

PARISH OFFICER:

CONTAINING ALL THE

Acts of Parliament at Large concerning them,

AND THE

CASES determined on those ACTS

IN THE

COURT OF KING'S BENCH.

To which is added,

A Collection of PRECEDENTS revised and settled by Persons of Eminence in the Law; comprising a greater Variety than any other Work of this Kind extant.

BY

JOHN Lord Viscount DUDLEY and WARD,

And T. CUNNINGHAM, Esq.

VOL. I.

LONDON:

Printed by H. WOODFALL and W. STRAHAN, Law-Printers to the King's Most Excellent Majesty;

And sold by W. GRIFFIN, in Catharine-Street, in the Strand.

MDCC LXIX.

INTRODUCTION,

CONTAINING,

I. A Collection of adjudged Cases, Rules and Observations, relating to the Validity, Commencement, Continuance, Power, and Construction or Interpretation of Acts of Parliament.

II. An historical Account of the Reporters and principal Authors of Treatises on the Laws and Customs of *England*.

I. *A Collection of adjudged Cases, Rules and Observations, relating to the Validity, Commencement, Continuance, Power, and Construction or Interpretation of Acts of Parliament.*

What shall be deemed a good act of parliament, and the requisites to make it valid.

BEFORE the art of printing was introduced into *England*, all statutes were, at the end of every session of parliament, transcribed on parchment, and sent to the sheriff of every county, and with them a writ from the king, commanding him to proclaim them throughout his bailiwick. After he had proclaimed them, which was usually done in his county court, the transcripts were there deposited, that any person might read or take copies of them. 2 *Inst.* 526, 644. 4 *Inst.* 26.

But an act of parliament was, even in the ancient times, when this laudable practice prevailed, equally binding, although it had not been so proclaimed. 4 *Inst.* 26. 2 *Inst.* 526.

No statute is good, unless it is assented to by the king and both houses of parliament. 4 *Inst.* 25. *Bro. Parl. pl.* 76. *Hob.* 111.

100215

It has been ſaid, that a parliament may be holden without ſummoning the lords ſpiritual to it: but the better opinion is, that they ought to be ſummoned; becauſe they have, by the law and cuſtom of parliament, as good a right to ſit in the houſe of lords as any other barons. 2 *Inſt.* 585.

If the prelates, however, after having been ſummoned, voluntarily abſent themſelves, the king, lords temporal and commons, may make an act of parliament without them. 2 *Inſt.* 585.

This is conſtantly the caſe where a bill is brought into parliament for attainting any offender of high treaſon. The lords ſpiritual are forbid by the canon law to be preſent at the paſſing ſuch a bill; yet, if the act proceeds, it is valid. 2 *Inſt.* 585, 586.

In like manner, where the ſpiritual lords, being preſent, refuſe to give their aſſent to, or proteſt againſt the paſſing of any bill, and the act proceeds, it is good without them. 2 *Inſt.* 585, 586.

Two bills being read in parliament, the one intituled (11 *Ric.* 2. *ſt.* 2. *c.* 2.) *A confirmation of the ſtatute of proviſors, and the forfeiture of him that accepteth a benefice againſt that ſtatute*; the other intituled, (11 *Ric.* 2. *ſt.* 2. *c.* 3.) *The penalty of him that brings a ſummons, or ſentence of excommunication, againſt any perſon upon the ſtatute of proviſors, and of a prelate executing it*; both which tended to reſtrain the authority, which was claimed by the pope, of diſpoſing of eccleſiaſtical benefices within this realm; the archbiſhops of *Canterbury* and *York*, for the whole clergy of their provinces, made their ſolemn proteſtation in open parliament, that they would in no wiſe aſſent to any reſtraint of the pope's authority. Theſe proteſtations were, at their requeſt, inrolled; yet both bills were paſſed by the king, lords temporal and commons, and are amongſt the printed ſtatutes. 2 *Inſt.* 586.

As the voices in parliament ought to be abſolute, either in the affirmative or negative, if the biſhops and clergy give their voices with a condition, ſuch conditional voices are as none, and an act is good without their concurrence. 2 *Inſt.* 585.

A bill was brought into parliament in the time of *Henry* VI. *That no man ſhould contract or marry himſelf to any queen of* England *without ſpecial licence and aſſent of the king, on pain to loſe all his goods and lands.* The biſhops and clergy aſſented thereto, *as far forth as the ſame ſwerved not from the law of God and the church*; *and ſo as the ſame imported no deadly ſin.* This being holden as no aſſent, it was ſpecially entered, that it was enacted by the king, lords temporal, and commons. 2 *Inſt.* 587.

And whenever any act is ſo ſpecially entered in the parliament rolls, to have been enacted by the king, lords temporal, and commons, it is not to be inferred that the prelates were not ſummoned to parliament: but it muſt be intended that they voluntarily abſented themſelves, or refuſed to give their aſſent to, or proteſted againſt the paſſing an act; or gave ſuch voices as were *contra legem et conſuetudinem parliamenti.* 2 *Inſt.* 585, 587.

Many

Many ancient ſtatutes are indeed penned in the form of charters, ordinances, commands or prohibitions from the king, without mentioning either lords or commons; and many others have only the general words, *It is provided*, or *It is ordained*, without ſaying by whom: but as theſe have conſtantly been received as ſtatutes, the preſumption is, that they were made by lawful authority. *Hawk. Pref. to the Stat.* 1 *Inſt.* 98.

The difference, according to lord *Coke*, between a ſtatute and an ordinance is, that the latter has not the aſſent of the king, lords and commons, but is made by only one or two of theſe powers. 4 *Inſt.* 25.

Mr. *Prynne*, in his animadverſions, *&c.* on the 4th *Inſt.* ſays, That there is *no* ſuch difference, nor any *difference* at all *between an ordinance and an act of parliament.* True it is, there are ſundry ordinances made by the king and his council out of parliament, for regulating abuſes; or proceedings in courts of juſtice, the mint, monies, victuals, or other occaſions (enrolled in the cloſe and patent, not parliament-roll) like orders of the king and lords of his council at this day, that are different from acts and ordinances of parliament, which are both the ſame, and had the threefold aſſent; as this clauſe in all writs for electing knights, citizens and burgeſſes of parliament *ad faciendum et conſentiendum hiis, quæ de communi concilio regni noſtri contigerint ordinari* (from which the name ordinance of parliament is derived.) The parliament rolls, and above one hundred printed acts of parliament, which call acts, ordinances, and ordinances, acts of parliament, and couple the words this act and ordinance uſually together, abundantly evince this beyond contradiction. If there were *any difference* between them, it was this, *That an ordinance was but a temporary act*, by way of probation, which the commons might amend at their pleaſure; *and an act of parliament a perpetual law*, which they could not alter when they pleaſed without the king's and lords concurrent aſſents, which difference is hinted in 37 *E.* 3. *Rot. Parl.* N°. 38. *Exact Abridg. p.* 98. though multitudes of printed acts refute this diſtinction between them; or elſe, that the commons petition in parliament entered in the parliament rolls, to which the king gave his royal aſſent, were ſtiled by ſome, ordinances; and theſe petitions with the royal aſſent thereto, when made into ſtatutes by advice of the king's judges and council, and entered in the parliament or ſtatute-rolls, were ſtiled ſtatutes or acts of parliament, as the precedents of this kind in the *Exact Abridg. &c.* evidence.——The ſame author, in his *Irenarches Redivivus*, treats very copiouſly upon this ſubject, from page 27 to page 42. and in many places of his *Exact Abridgement of Records in the Tower.*

Where any ſtatute is againſt common right and reaſon, or repugnant or impoſſible to be performed, the common law ſhall controul it, and adjudge it to be void. 8 *Rep.* 118.

A ſtatute contrary to natural equity, as to make a man judge in his own cauſe, is likewiſe void; for *jura naturæ ſunt immutabilia. Hob.* 87. 8 *Rep.* 118.

But

But it is ſaid in another caſe, where this laſt caſe is cited, that an act muſt be clearly contrary to natural equity; for that the judges will ſtrain hard, rather than interpret any act of parliament void *ab initio*. 11 *Rep.* 63. *Foſter*'s caſe. 10 *Mod.* 115.

The title of an act of parliament is no part of it. 3 *Rep.* 33. *Hard.* 324. Lord *Raym.* 77. This is uſually framed by the clerk of that houſe in which the bill firſt paſſes, and is ſeldom read more than once.

The cuſtom of affixing titles to ſtatutes did not begin till about the eleventh year of the reign of *Henry* the Seventh. Lord *Raym.* 77. *Hard.* 324.

A preamble generally contains the motives and inducements to the making of a ſtatute; but it is no part thereof. Heretofore acts of parliament were made without preambles. 6 *Mod.* 62.

Things incident to an act of parliament.

Wherever any thing is provided for generally by an act of parliament, all remedies and requiſites thereto neceſſary are ſupplied by the common law. 1 *Inſt.* 235. 2 *Inſt.* 222.

If any offence is made felony by ſtatute, it ſeems clear that every ſuch ſtatute does, by neceſſary conſequence, ſubject the offender to the like attainder, forfeiture, *&c.* and does require the like conſtruction, as to thoſe who ſhall be accounted acceſſaries before or after, and to all other intents and purpoſes, as is incident to a felony at the common law. 1 *Hawk.* 305. 3 *Inſt.* 47, 49, 50.

Miſpriſion of felony is as well incidental to a felony by ſtatute as to one at the common law. 1 *Hale's H. P. C.* 652.

When any power is given by ſtatute, all incidents, neceſſary to the making it effectual, are alſo given: for the maxim is, *Quando lex aliquid concedit, concedere videtur et id, per quod devenitur ad illud.* 12 *Rep.* 130, 131. 2 *Inſt.* 306.

Of the commencement of an act of parliament.

When the king comes to meet the houſes, then the parliament begins. *Per Cur.* L. *Raym. Rep.* 343. *Paſch.* 13 *W.* 3. Birt *qui tam, &c. v.* Rothwell.

Every ſtatute begins to have effect, unleſs a time for its commencement is therein mentioned, from the firſt day of that ſeſſion of parliament in which it is made. 1 *Rol. Abr.* 465. *Bro. Relat. pl.* 35. *Bro. Parl. pl.* 86. 4 *Inſt.* 25, 27. *Hob.* 309. *Sid.* 310.

But wherever a particular day, to which it ſhall extend, is appointed by an act of parliament, its relation ſhall be confined to that day. L. *Raym.* 371. *Plowd.* 79. *Bro. Parl. pl.* 86. *Hob.* 222.

If two acts are made in the ſame ſeſſion of parliament, and no time is fixed for the commencement of either, neither ſhall have priority: for both have relation to the ſame day and inſtant of time; and they ſhall, although contained in two chapters, be conſtrued as if they had been one and the ſame act of parliament. 1 *Jo.* 22.

It is in general true, that ſtatutes have no retroſpect beyond the time of their commencement; for the rule and law of parliament is, that *nova conſtitutio futuris formam debet imponere, non præteritis.* A treaty of marriage

riage being on foot, between the plaintiff and a perſon whom he afterwards married, and had 2000 *l.* with her as a portion, *Shooter*, who was of kin to the plaintiff, promiſed to give him as much, or to leave him as much by his will. This promiſe was made before the 24th day of *June* 1677. *Shooter* died in the *September* following, without having paid the money, or made proviſion by his will for the payment thereof. An action was brought againſt his executors, and the queſtion made upon a ſpecial verdict was, whether this promiſe, it not being in writing, was within the 29 *Car.* 2. *c.* 3. whereby it is enacted, "That from and after "the twenty-fourth day of *June*, which ſhall be in the year of our Lord "one thouſand ſix hundred and twenty-ſeven, no action ſhall be brought "to charge any perſon, upon any agreement made upon conſideration "of marriage, unleſs the agreement upon which ſuch action ſhall be "brought, or ſome memorandum or note thereof, ſhall be in writing "and ſigned, *&c.*" Judgment was for the plaintiff. *Et per Cur.* It cannot be preſumed that this act was to have a retroſpect, ſo as to take away a right of action, to which the plaintiff was intitled before the 24th day *June* 1677. 2 *Mod.* 310.

But ſtatutes do, in ſome caſes, relate to a time antecedent to their commencement. Thus, if a parſon holds a farm, with condition not to alienate, and then a ſtatute is made, which inflicts a puniſhment upon him for holding a farm: yet the condition remains good. 2 *Brownl.* 142.

Where *A.* covenants not to do ſome act or thing, which was lawful to do, and an act of parliament comes after, and compels him to it, the ſtatute repeals the covenant: or if *A.* covenants to do a thing which is lawful, and an act of parliament comes and hinders him from doing it, the covenant is repealed. But if a man covenants not to do a thing, which then was unlawful, and an act comes and makes it lawful to do it, ſuch act of parliament is no repeal of the covenant. 1 *Salk.* 198.

It has however been, in a later caſe, held, that in conſtruing an act of parliament, made *ex poſt facto*, the words ought not to be ſtrained to defeat a covenant, to the benefit whereof a party was well intitled at the time the act was made. L. *Raym.* 1352.

How long an act of parliament continues in force.

Statutes are either temporary or perpetual. Temporary ſtatutes continue in force, unleſs repealed, till the time for which they were made expires; perpetual ones till they are repealed. Every ſtatute, for the continuance of which no time is limited, is perpetual, although it is not expreſly declared ſo to be. It has been laid down, that where a ſtatute is made for ſeven years, and after the expiration of that term, it is by another made perpetual, the latter only is to be conſidered as in force. *Lit. Rep.* 213.

But this caſe does not ſeem to be law. The ſtatute againſt perjury, made in the fifth year of the reign of queen *Elizabeth*, was only to continue in force till the end of the next parliament. Another parliament was begun in the 13th year of her reign, another in the twenty-ſeventh, and another in the twenty-eighth: but this act was not made perpetual till the

the twenty-ninth year of the reign of that princeſs. The firſt ſtatute has, however, been always held to be in force, and the offence of perjury is conſtantly charged, in an indictment, to have been committed againſt the form of that ſtatute. *Owen* 135.

In an indictment for perjury, in an affidavit to hold to bail, the affidavit was laid to have been taken by virtue of the 12 *Geo.* 1. *c.* 29. which was a temporary law for five years only, and after continued with ſome alterations by the 5 *Geo.* 2. *c.* 27. It was objected for the defendant, that it ought to have been laid to have been taken by virtue of the latter act, and eſpecially as it is not a bare continuance, but the firſt is in ſome reſpect altered. This objection was over-ruled; and by Lord *Hardwicke* Ch. J. When an act is continued, every body is eſtopped to ſay that it is not in force; and as there has been no alteration in this reſpect, it is but a common continuance *quoad hoc*. *Stran.* 1066.

If, before the expiration of a temporary act of parliament, another act is made to continue it for ever, the former remains in force as much as if it had been at firſt perpetual. *Lutw.* 221. *Owen* 135. *Cro. Eliz.* 750.

Divers parliaments have attempted to bar, reſtrain, ſuſpend, qualify or make void, the acts of ſubſequent parliaments: but this never could be effected; for a later parliament hath even power to abrogate, ſuſpend, qualify or make void, the acts of a former, in the whole or any part thereof, notwithſtanding any words of reſtraint or prohibition in the acts of the former. 4 *Inſt.* 43.

Some parts of *Magna Charta*, although it is expreſly declared by the 42 *Ed.* 3. *c.* 3. that all ſtatutes contrary thereto ſhall be void, have been repealed or altered by ſubſequent ſtatutes; yet theſe laſt have been conſtantly held to be in force. *Jenk. Cent.* 2.

Where an act, which has been repealed, is revived, the repealing act becomes of no force. 2 *Inſt.* 686.

By the repeal of a repealing ſtatute, the firſt ſtatute is revived. 12 *Rep.* 7. 2 *Inſt.* 686.

But if an act has been repealed by three different acts, although two of theſe repealing acts are repealed, yet the third continues in force, and repeals the original act. 12 *Rep.* 7.

When a ſtatute is repealed, all acts done under it while it was in force are good; but if it is declared null, all theſe are void. *Jenk.* 233.

All ſtatutes, beſides that they may be put an end to by being in fact repealed, are likewiſe liable to a repeal by implication. Every affirmative act is a repeal, by implication, of a precedent affirmative one, ſo far as it is contrary thereto, although there are no negative words in it: for *leges poſteriores priores abrogant*. 11 *Rep.* 61. *Show.* 520. L. *Raym.* 160. 4 *Inſt.* 43.

But where a ſtatute, before perpetual, is continued by an affirmative ſtatute for a limited time, this does not amount to a repeal of it at the end of that time. *Raym.* 397.

Where two acts contradictory to each other, are paſſed in the ſame ſeſſion, the latter only ſhall take effect. 6 *Mod.* 287.

If a proviſo is repugnant to the purview or enacting part of a ſtatute, it ſhall ſtand, and be, ſo far as it is ſo, a repeal of the purview, becauſe it was laſt agreed to by the makers of the law. *Fitz-Gib.* 195.

But repeals by implication are not favoured in law, nor are they allowed, except the inconſiſtency or repugnancy is plain: for they carry with them a reflection upon the wiſdom of the legiſlature; and ſuch repeals have ever been confined to the repealing as little of the preceding laws as is poſſible. 11 *Rep.* 63. 1 *Rol. Rep.* 88. 10 *Mod.* 118.

Although two acts of parliament are *ſeemingly* repugnant; yet, if there be no clauſe of *non obſtante* in the latter, they ſhall, if poſſible, have ſuch a conſtruction, that the latter may not be a repeal of the former. *Dy.* 347. *Bro. Parl. pl.* 9. 11 *Rep.* 63. *Hard.* 344.

Of the vaſt power of an act of parliament.

The power of an act of parliament is ſo exceeding great, that only the laws of God and nature can controul it.—— In regard of all *civil* acceptations, an act of parliament may do any thing: as, 1ſt, to make a woman a mayor or juſtice of peace; for theſe are the creatures of men; but an act of parliament cannot alter the courſe of nature, as to make a woman a man. 2*dly*, It cannot do any thing out of the limits of its power, as to make a man inheritable in *France*. 2 *Jo.* 12. *Per Wild*, J. in his argument in the caſe of *Crow* v. *Ramſey*.

Holt Ch. J. Thought what Lord *Coke* ſays in Dr. *Bonham*'s caſe, 8 *Rep.* a very reaſonable and true ſaying, That if an act of parliament ſhould ordain that the ſame perſon ſhould be both party and judge, or, which is the ſame thing, judge in his own cauſe, it would be a void act of parliament; and an act of parliament can do no wrong, tho' it may do ſeveral things that look pretty odd; for it may diſcharge one from the allegiance he lives under, and reſtore to the ſtate of nature: but it cannot make one that lives under a government judge and party. *Per Holt* Ch. Juſtice. 12 *Mod.* 687, 688. *Hil.* 13 *W.* 3. *B. R.* in the caſe of *The City of London* v. *Wood*.

So an act of parliament may not make adultery lawful, that is, it cannot make it lawful for *A.* to lie with the wife of *B.* but it may make the wife of *A.* to be wife of *B.* and diſſolve her marriage with *A.* *Per Holt* Ch. J. 12 *Mod.* 688. in the caſe of *The City of London* v. *Wood*.

Of publick and private ſtatutes.

Such ſtatutes as relate to all the ſubjects of the realm are public or general ones. 8 *Rep.* 138.

Although the words of a ſtatute are ſpecial; yet if the reaſon of it is general, it thereby becomes a general act. 10 *Report* 101. *Beaufage*'s caſe.

But wherever the intent of an act of parliament is particular, it ſhall, although the words of it are general, be deemed a private act. *Plowd.* 204. *Stradling* v. *Morgan*.

All ſtatutes that concern the king are general; for every ſubject has an intereſt in him as the head of the body politick, and muſt be as ſenſible

of any thing that affects him, as a member of the natural body is of what the head at any time feels. 4 *Rep.* 77. *Holland*'s case. 8 *Rep.* 28, 138. *Hob.* 227.

The rule of law is that of general statutes, the judges ought to take notice, though they are not pleaded, otherwise it is of special or particular statutes: and for the better understanding the books in this point, and what shall be said in judgment of the law *statutum generale*, and what is *statutum speciale:* it is to be understood that *generale dicitur a genere, & speciale a specie*; and what are *genus*, *species*, and *individua*: Know that spiritualty is genus, bishopric, deanery, *&c.* are species, and bishopric or deanery of *Norwich* are *individua*, *sic dicta quia in partes dividi nequeunt.* 4 *Rep.* 76. *a.* in a *note* on *Holland*'s case.

This word (officer) is a word general, or genus, (sheriff) is a special word or species, and (the sheriff of *Norfolk*) is *individuum*; and therefore the statute of *Westm.* 1. *cap.* 26. by which it is enacted, That no sheriff nor other minister of the king shall take reward to do his office, but be paid of that which he takes of the king, is a general act, because it extends to all officers in general; but the statute of 23 *H.* 6. 10. which extends solely to sheriffs, is only a particular and special act, as is held 3 *Mar. D.* 119. 4 *Rep.* 76. *a. b.* in a note on *Holland*'s case.

Acts of parliament concerning mysteries or trades are general acts; but an act of parliament concerning the trade of a grocer is a special act, as is said 28 *H.* 8. *fol.* 27. *Dyer*; because the trade of grocers contains under it *individua* or singular persons, as this or such a grocer by name. 4 *Rep.* 76. *b.* in a note on *Holland*'s case. But the *stat.* 2 *Phil. & Mar. c.* 11. concerning the using the trade of a dyer, *&c.* not being a clothworker, *&c.* though it concerns a particular thing, and therefore is private in its nature; yet the forfeiture being to the king, and so the king being concerned, this has made it a publick act. *Skin.* 429. *pl.* 5.

The preamble of the 13 & 14 *Car.* 2. *c.* 12. recites divers mischiefs to the publick, that arise for want of proper regulations concerning the poor: and by *par.* 4. it is enacted, That for the redress of the mischiefs intended hereby to be remedied, a workhouse shall be erected in the county of *Middlesex*, *&c.* The words in this preamble were held to make that part of the act general; because it concerns the safety of the king's person, and the quiet of his government, that a stop should be put to such evils: and this clause for erecting a workhouse was also held to be general; because, as it refers to the mischiefs mentioned in the preamble, a remedy is thereby provided for them in the county of *Middlesex.*

Any act of parliament concerning the public revenue is a public law: but some clauses in it may be private, because they relate to private persons; for a statute may be general in one part, and special in another. 12 *Mod.* 249. *Anon.* 12 *Mod.* 613. 10 *Rep.* 57. *Plowd.* 65. *Hob.* 227. *Sid.* 24.

If a statute be of a private nature, as where it concerns a particular trade;

trade; yet if any forfeiture is given to the king, it thereby becomes a public ſtatute. *Skin.* 429. *Rex* v. *Baggs.*

In debt on bond the defendant pleaded a certain ſtatute for the diſcharge of poor priſoners, but did not ſet it out. Exception was taken that this ſtatute ſhould have been pleaded at large, becauſe it is a private ſtatute; for it does not extend to all poor priſoners, but to ſuch only as were in priſon at a time therein mentioned. *Per Cur.* This ſhall be conſtrued to be a public act. 1ſt, Becauſe all the people of *England* may be concerned as creditors to theſe poor priſoners. 2. It is an act of charity, and therefore ought to have a more favourable interpretation. 3. As it is a long act, and difficult to be pleaded, theſe poor people could never bear the expence of pleading it ſpecially. L. *Raym.* 120. *Jones* v. *Axen.*

The judges are not obliged to take notice of an act of pardon, unleſs they are by ſuch act directed ſo to do: for an act of pardon is not a general act; and it is no conſequence, that becauſe a man may give it in evidence upon the general iſſue pleaded, that therefore the judges muſt take notice of it in a collateral caſe. L. *Raym.* 709. *Ingram* v. *Foot.* 12 *Mod* 613.

The ſtatute againſt non-reſidence, and that againſt pluralities, are public; for they extend to every ſpecies of the ſpiritualty. 4 *Rep.* 120. *Dumpor*'s caſe. 2 *Rol. Abr.* 465. 4 *Rep.* 76.

An act of parliament, however, that concerns only ſome ſpecies of the ſpiritualty, as the biſhops, or a particular biſhop, is a private one. 4 *Rep.* 76. *Holland*'s caſe. 2 *Rol. Abr.* 466. *Cro. Jac.* 112. 2 *Mod.* 57.

The ſtatute of 1 *Weſtm.* which ſays, that no ſheriff or other miniſter of the king ſhall take any reward to do his office, but be ſatisfied with what he receives from the king, is a general law, becauſe it extends to all officers. 4 *Rep.* 76. *Holland*'s caſe.

But the 23 *H.* 6. *c.* 10. which is confined to ſheriffs, has been held to be a private act. 2 *Saund.* 154. *Benſon* v. *Welby*, *Trin.* 22 *Car.* 2. *Plowd.* 65. *Sid.* 24, 439.

The contrary has indeed been laid down in ſome caſes; and in one, ſubſequent to the caſe in *Saunders*, *Holt* Ch. J. was of opinion, that this is a public ſtatute. 2 *Lev.* 103. *Okey* v. *Sell. Paſch.* 26 *Car.* 2. 1 *Lev.* 83. *Sid.* 23.

The former opinion is, however, more agreeable to the principle which governs in ſuch caſes; and the authorities in ſupport of it are of much greater weight.

The act of parliament made in the time of *Henry* the Sixth, that all corporations and licences granted by that prince ſhould be void, was held to be a private act; becauſe, as it does not include all corporations, it is not general, but particular in a generality; or, to ſpeak with more propriety, general in a particularity. *Plowd.* 65. *Dyer* v. *Manningham. Bro. Parl. pl.* 6. 4 *Rep.* 76. *Dy.* 119.

In many acts of parliament, which would otherwise have been private, there are clauses in the respective acts, by which they are declared to be public. 4 *Bac. Abr.* 641.

Of affirmative and negative statutes.

Some statutes are, from their being made in the affirmative, called affirmative: others obtain the name of negative statutes, because they are penned in negative terms. 4 *Bac. Abr.* 641.

It is a maxim in law, that a statute made in the affirmative, without any negative express or implied, doth not take away the common law. 2 *Inst.* 200. 1 *Inst.* 111, 115. *Show. Parl. Ca.* 64.

By the 43 *Ed.* 3. *c.* 11. it is enacted, "That the pannel of assize shall be arrayed four days before the day of assize;" yet if this is done two days before the day of assize, it is good; for two days were sufficient at the common law; and where a statute is, as here, in the affirmative, it does not take away the common law. *Bro. Parl. pl.* 70.

The statute of *Marlbridge*, *c.* 21. and the statute of 2 *Westm. cap.* 39. are, That, after complaint made to the sheriff, he may take the *posse comitatus* and make replevin. *Et per Cur.* He may serve process with power at the common law, and a statute in the affirmative is not against this. *Bro. Parl. pl.* 108.

But although an affirmative does not take away the common law, it is nevertheless binding; and a party may make his election, to proceed upon such statute, or at the common law. 2 *Inst.* 200. *Bro. Parl. pl.* 70. 1 *Rep.* 64. *Cro. Eliz.* 104.

If an affirmative statute, which is introductive of any new law, limits a thing to be done in one manner, it shall not, even where there are no negative words, be done in any other. *Plowd.* 206. *Stradling* v. *Morgan. Hob.* 298. *Sid.* 56.

But where the question was, Whether an appointment of overseers, made after the expiration of the time limited by statute for such appointment, was valid? It was held to be so. *Et per Cur.* The 43 *Eliz. c.* 2. ought to have a liberal construction, because it is an act under which provision is to be made for the poor. As it was not in the power of the parish to compel the justices to make an appointment within the time, this appointment ought *ex necessitate* to be held good. Although this statute is introductive of a new law, yet no negative ought to be implied against the meaning and justice thereof. *Str.* 1123. *Rex* v. *Sparrow.*

Where a power is given, by a statute introducing some new law to a certain person, by the designation of that one person, although it is an affirmative statute, all others are excluded from the exercise thereof, *quia inclusio unius est exclusio alterius.* 11 *Rep.* 64. *Foster*'s case.

The designation however of a certain person, to whom some new power is given by an affirmative statute, does not always exclude another who was by a precedent statute authorized to do the same. 11 *Rep.* 64. *Foster*'s case.

If an action, founded upon a statute, is directed to be brought before the justice of *Glamorgan*, in his sessions, it cannot be brought before

before any other perſon, or in any other place. *Plowd.* 206. *Stradling* v. *Morgan.*

It being by the 31 *Ed.* 3. *c.* 12. provided, "That error in the exchequer chamber ſhall be amended before the chancellor and treaſurer, ſuch error cannot be amended before any other perſon; and yet this is an affirmative ſtatute. 11 *Rep.* 59. *Foſter's* caſe.

By the 26 *Geo.* 2. *c.* 22. for eſtabliſhing the *Britiſh Muſeum*, ſome acts were directed to be done by the majority of the truſtees. It was ſo clear, that theſe acts could not be done, under this ſtatute, by the majority of the truſtees preſent at any meeting, unleſs that majority was alſo a majority of the whole truſtees, that the 27 *Geo.* 2. *c.* 16. was made, for enabling the majority of thoſe truſtees who ſhall be preſent, provided that ſeven are preſent at any meeting to do them.

By the 8 *H.* 6. *c.* 16. it is provided that, after office found, he who finds himſelf aggrieved may, within a month, offer his traverſe, and to take the premiſſes to farm; and that the chancellor, treaſurer or other officer, ſhall demiſe them to him to farm until, *&c.* By the 1 *H.* 8. *c.* 16. liberty is given to the perſon aggrieved to do this at any time within the ſpace of three months. Afterwards, the 32 *H.* 8. *cap.* 40. authorizes the maſter of the wards to grant a leaſe of the lands of a ward, or an ideot, while they remain in the hands of the crown. This laſt act, notwithſtanding the deſignation of a new perſon, ſhall not take away the power granted by the former: for if, before any leaſe is made by the maſter of the wards, the chancellor or treaſurer makes a leaſe of any ſuch premiſſes, the maſter of the wards cannot afterwards demiſe the ſame. *Stamf. Prerog.* 69. 11 *Rep.* 64.

A negative ſtatute ſo binds the common law, that a man cannot afterwards uſe it. *Bro. Parl. pl.* 72.

At the common law, if a lord diſtrained for cuſtoms, ſervices, or any other duties, when none were behind, an action of treſpaſs lay; but ſince the ſtatute of *Marlbridge*, the words of which are, *If any, of what eſtate ſoever he be, diſtrain his tenant for ſervices and cuſtoms, which he alledges to be due unto him, or for any other thing, for the which the lord of the fee hath cauſe to diſtrain, and after it is found that the ſame ſervices are not due, the lord ſhall not therefore be puniſhed by fine*; it has been held that in ſuch caſe no action lies. 2 *Inſt.* 105. *Bro. Parl. pl.* 72.

A woman, as well as a man, might at the common law have had an appeal of the death of any of her anceſtors: but a woman can now only have it in the caſe of her huſband's death; for by *Magna Charta*, *c.* 34. it is declared, that "no man ſhall be taken or impriſoned upon the appeal of a woman for the death of any other than of her huſband." 2 *Inſt.* 68.

An affirmative ſtatute does not take away a cuſtom. 1 *Inſt.* 111, 115.

It has been formerly laid down, that a cuſtom is alſo good againſt a negative ſtatute, unleſs ſome new law is thereby introduced; for, if it is only declarative of the common law, as a man might have preſcribed or alleged

alleged a cuſtom againſt the common law, ſo he may againſt ſuch a ſtatute; for *conſuetudo privat communem legem.* 1 *Inſt.* 115.

But it has been ſince held, that no preſcription or cuſtom, unleſs it is therein ſaved, is good againſt a negative act of parliament, whether it be declaratory of an old law, or introductory of a new one. 1 *Jo.* 127. Lord *Lovelace*'s caſe. 2 *Bulſt.* 36. *Show.* 420. *Show. Parl. Ca.* 175.

Whoſe province it is to conſtrue an act of parliament.

The power of conſtruing ſtatutes is in the judges; for they have a liberty and authority over the laws, and eſpecially over the ſtatute laws, to mould them according to reaſon and convenience, to the beſt and trueſt uſe. *Hob.* 346. *Sheffield* v. *Radcliffe.* *Plowd.* 109. 3 *Rep.* 7.

But only the judges of the temporal courts have this power. *Mar.* 90. *pl.* 148. 2 *Inſt.* 614.

An ordinary cannot impoſe any new condition in a bond of adminiſtration, but muſt take it in the words of the 21 *H.* 8. *c.* 5. and when an action is brought upon it, the meaning of that ſtatute, and of the condition, muſt be aſcertained by a court of common law. *Hob.* 83. *Slawney*'s caſe.

In a caſe, where a queſtion aroſe, Whether a man was a brankrupt? it was inſiſted, that as the jury had only found facts, but had not drawn the concluſion that he was a bankrupt, the court could not do this; *ſed non allocatur. Et per Cur.* As the jury have found the facts, the court may judge from theſe, whether the man is within the deſcription of any of the bankrupt acts. 2 *Jo.* 142. *Dodſworth* v. *Anderſon.*

It was found, by a ſpecial verdict, that the defendant had an eſtate of one hundred pounds a year; that he carried on the buſineſs of a poulterer; that he had a hare in his cuſtody; and that he did ſell a hare for four ſhillings: and one queſtion was, whether this perſon was a chapman within the meaning of the 5 *Ann. c.* 14. by which it is enacted, "That if any higler, chapman, carrier, inn-keeper, victualler or alehouſe-keeper, ſhall have in his cuſtody, or ſell any hare, pheaſant, partridge, moor, heath game or growſe, he ſhall forfeit for every ſuch offence the ſum of five pounds. 4 *Bac. Abr.* 643. cites MS. *Rep. Eaſt.* 27 *Geo.* 2. *Searl qui tam* v. *Poulter.*

Upon arguing this caſe, it was ſaid for the defendant, that if the word *chapman* had been there intended for a word of general ſignification, it would have been the laſt word made uſe of, and would not, as is done, have been inſerted before the word *carrier*, and other words of a more confined ſignification. It was alſo ſaid, that as the jury have not by this verdict found him a chapman, the court cannot now infer that he is one; and 2 *Rol. Abr.* 693. 1 *Inſt.* 227. *Com.* 479. L. *Raym.* 1581. *Kel.* 78. were cited. It was anſwered, that the doubt in the caſes cited was, whether ſufficient facts were found by the jury. But here the facts of having a hare in his cuſtody, and ſelling a hare, are found; and the only doubt of the jury is, what the meaning of the word *chapman* in this act of parliament is: And the caſe of Sir *Thomas Jones* 143. juſt now mentioned, was relied on, to ſhew that it is the proper buſineſs of the court to conſtrue ſuch words as this in an act of parliament. The reply was, That

as

as divers acts of parliament had described a bankrupt, the court in the case in Sir *Thomas Jones* did nothing more than judge of the person within any of these descriptions: but no statute has described a chapman. The judgment, in which the court were unanimous, was for the defendant; and by *Ryder* Ch. J. the word *chapman* is in some cases, as when applied to a tradesman who becomes a bankrupt, of very general signification; but its meaning in this case must be gathered from the act itself. It is clear from the preamble, that the design of this statute is to prevent the destruction of the game by idle and profligate persons, but not to prevent all sale of game; and much less to prevent all persons, who may fall under the denomination of the word *chapman* in its larger sense, from having it in their custody. Two sorts of persons are by this act forbid to have game in their custody; the carriers of it, and such as suffer it to be eat in their houses. The word *chapman* then, as it stands between the words *higler* and *carrier*, means only a petty chapman who, by reason of his trading up and down the country, is likely to be employed in carrying game, and could never be intended to include a poulterer.

Rules to be observed in the construction or interpretation of acts of parliament.

It is the most natural and genuine exposition of an act of parliament, to construe one part of the act by another part of the same act; for that best expresseth the meaning of the makers; and such exposition is *ex visceribus actus*. 1 *Inst.* 381.

Rule 1. In the construing of any part of a statute, every other part thereof must be considered.

When one branch of a statute is obscure, expositors accustom themselves to consider the other branches; for oftentimes the words and meaning of one clause lead to the sense of another. *Plowd.* 365. *Stowel* v. *Zouch.* 11 *Mod.* 161.

An act of parliament ought, upon the whole, to be so construed, that if it can be prevented, no clause, sentence or word, shall be superfluous, void or insignificant. 1 *Show.* 108. *Rose* v. *Berchett.* *Hard.* 344.

The title of a statute is not to be regarded in construing it, because it is no part thereof. *Hard.* 324. L. *Raym.* 77.

It is in general true, that the preamble of a statute is a key to open the mind of the makers, as to the mischiefs that are intended to be thereby remedied. *Plowd.* 309. *Howell* v. *Zouch.* 1 *Inst.* 79.

But this rule must not be carried so far, as to confine the more general words of an enacting clause to any particular words in the preamble; for there was a time when acts of parliament were made without preambles; and even now preambles are no more than recitals of some inconveniencies, but they do not exclude any other for which a remedy is given by the enacting clause. 8 *Mod.* 144. *Rex* v. *Althoes.* 6 *Mod.* 62. *Palm.* 486. 1 *Jo.* 164.

It was said by Lord *Cowper*, that he could by no means agree with the notion, that a preamble shall restrain the operation of an enacting clause; and he said, that if the preamble of the *Coventry Act* had only recited the barbarity of slitting *Coventry*'s nose, and the enacting clause had been general against the cutting off a member, whereby a man is disfigured or defaced; it might with equal reason have been objected, that cutting off the lips, or putting out an eye, would not have been

within the act, becauſe they are not recited in the preamble. 1 *Will.* 320: *Copeman* v. *Gallant.*

General words in a ſtatute may be reſtrained by ſubſequent ſentences or clauſes in the ſame ſtatute. 8 *Mod.* 8. *Rex* v. *The Biſhop of Ardmagh.*

If lands are diſgavelled, by act of parliament, to all intents and purpoſes, and made defeaſible as lands at the common law, the former general words are ſo reſtrained by the more particular ſubſequent ones, that although the partibility of the eſtate, by which many families have been reduced to a low eſtate, is put an end to; the cuſtom to deviſe is not hereby taken away; for this is a privilege at the common law, and no part of the cuſtom of gavelkind. 1 *Lev.* 80. *Wiſeman* v. *Cotton.*

But no preceding reſtraining words ſhall controul the general words in the enacting part of an act of parliament. 8 *Mod.* 144. *Rex* v. *Althoes. Palm.* 486. 1 *Jo.* 164.

Where a thing is given or limited by particular words in a ſtatute, this ſhall not be taken away or altered by any ſubſequent general words. 1 *Jo.* 26. *Standon* v. *The Univerſity of Oxford.*

A ſaving in a ſtatute which is repugnant to the purview of the ſtatute, is void. 1 *Rep.* 47. *Alton Wood*'s caſe. *Plowd.* 564.

The purview of an act may be qualified or reſtrained by a ſaving in it; but if the ſaving is deſtructive of the purview, it ſhall be void. 1 *Jo.* 339. *Rex* v. *Prieſt.* 10 *Mod.* 115.

Where the proviſo in a ſtatute is directly contrary to the purview, the proviſo ſhall be held good, and not the purview: becauſe it ſpeaks the laſt intention of the legiſlators. *Fitz.* 195. *The Attorney General* v. *The Governors of Chelſea Water-works.*

Rule 2 Where divers ſtatutes relate to the ſame thing, they muſt all be taken into conſideration in conſtruing any one of them.

If one act of parliament prohibits a thing to be done, and another act is after made, whereby a forfeiture is inflicted upon the perſon doing that thing, both theſe are to be conſidered as one act. *Plowd.* 206. *Stradling* v. *Morgan.*

When an action, founded upon a former ſtatute, is given by another ſtatute in a new caſe, all that was adjoined to it in the firſt ſtatute is alſo given with it. *Bro. Waſte, pl.* 68.

An act lately made ſhall be taken to be within the equity of one made long ſince; and there are in our books frequent inſtances of its being ſo held. 4 *Rep.* 4. *Vernon*'s caſe.

If a thing which had no exiſtence, before the making of a latter act of parliament, is within the reaſon of a former act, it ſhall be taken to be within its meaning. Lord *Raym.* 1028. Sir *William Moore*'s caſe. 2 *Jo.* 63.

The *ſtat.* 13 *Eliz. c.* 10. concerning leaſes made by ſpiritual perſons, being enlarged by the 14 *Eliz. c.* 11. although only the former of theſe is recited in the 18 *Eliz. c.* 11. the latter is by conſequence alſo recited. 1 *Vent.* 246. *Bayly* v. *Murin.*

In the ſame caſe it is laid down, that there is ſuch a connexion betwixt all the ſtatutes concerning leaſes made by eccleſiaſtical perſons, that they

are all to be taken into the conſtruction of any one of them. The 32 *H.* 8. *c.* 28. is not recited in the 1 *Eliz. c.* 19. nor in the 13 *Eliz. c.* 10. Yet a leaſe is not warranted by either of theſe ſtatutes, unleſs it has the qualifications required by the 32 *Hen.* 8. and this courſe is uſual in the conſtruing of ſtatutes made *in pari materia.*

The 22 & 23 *Car.* 2. *c.* 10. for the better ſettling of inteſtates eſtates, is continued with ſome additional clauſes by the 1 *Jac.* 2. *c.* 17. It was held by Lord *Hardwicke* chancellor, that for this reaſon the latter muſt be conſidered, as if the former had been repealed and re-enacted by it. *Barn. Ch. Rep.* 276. *Wallis* v. *Hodſon.*

A queſtion ariſing whether juſtices of the peace had a power to appoint *five* overſeers for the pariſh of St. *Chad* in *Shrewſbury*, it was held that they had not: And by Lord *Mansfield* Ch. J. The number of overſeers was by the 29 *Eliz. c.* 3. to be preciſely four. As this number might in ſome caſes have been found too large, power is given by the 43 *Eliz. c.* 29. of appointing four, three, or two, reſpect being had to the greatneſs of the pariſh; but no power is given to exceed in any caſe the number of four. The rule of law as to a ſpecial authority is, that every thing done under the colour of it, which is not within it, is void. There is no need to inſert negative words in either of theſe acts: Nay, ſince no power had been ever given to appoint five overſeers, it would have been quite nugatory to have ſaid that five ſhall be appointed; as the 39 *Eliz.* was undoubtedly under conſideration of the legiſlature, when the 43 *Eliz.* was made, it ought, although long ſince expired, to be now taken into conſideration in explaining this laſt: for it is a rule in the conſtruction of ſtatutes, that all which have relation to the ſame ſubject, notwithſtanding ſome of them may be expired, or are not referred to, muſt be taken as one ſyſtem, and conſtrued conſiſtently; and the practice has been ſo to do in caſes of bankruptcy, church leaſes, and in other caſes. See 1 *Bur. Rep.* 445.

Rule 3 Words and phraſes, the meaning of which in a former act of parliament have been aſcertained, are, when uſed in a ſubſequent act, to be underſtood in the ſame ſenſe.

Exception was taken to an indictment upon the 14 *Car.* 2. *c.* 12. againſt churchwardens and overſeers, for not making a rate to reimburſe a conſtable, that the ſtatute only puts it in their power, by the word *may*, to make ſuch a rate, but does not require the doing of it as a duty, for the omiſſion of which they are puniſhable; *ſed non allocatur*; for where a ſtatute directs the doing of a thing for the ſake of juſtice or the public good, the word *may* means the ſame as the word *ſhall.* The 23 *H.* 6. ſays the ſheriff *may* take bail; but the conſtruction has been, that he *ſhall* do this. *Salk.* 609. *Rex* v. *Barlow.* *Vern.* 154.

So the ſtatute of 21 *Hen.* 8. *c.* 13. of pluralities is, that chaplains *may* purchaſe licence, *&c.* this does not give liberty to do it or not to do it; but if they do not do it, they cannot hold two livings of 8 *l.* value. *Arg. Moor* 440. *Hil.* 38 *Eliz.* in the caſe of *Robins* v. *Gerard.*

So where the ſtatute directs that the lord chancellor *may* grant a ſtatute of bankruptcy. *Vern.* 154. *Paſch.* 32 *Car.* 2. *Blackwell*'s caſe.

Every crime, which is by any ſtatute ordained to have or undergo judgment of life or member, is a felony, although the word felony is not mentioned in the ſtatute. *Bro. Coro.* 204. 1 *Inſt.* 391. 2 *Inſt.* 434. 3 *Inſt.* 91. *Hob.* 293. *Haw.* 107.

But if an offence is by ſtatute only prohibited under pain of forfeiting all that a man has; or of forfeiting body and goods; or of being at the king's will for body, land and goods; it ſhall amount to no more than a high miſdemeanor. 1 *Inſt.* 391. 3 *Inſt.* 145, 146. *Hob.* 270, 293.

If an act of parliament ſays an offender ſhall be puniſhed according to his demerits, theſe words import, that he ſhall be only puniſhed in the ordinary courſe of juſtice by indictment. 1 *Hawk.* 107. 4 *Inſt.* 171.

When a ſtatute gives a penalty to be recovered before a juſtice of the peace, but preſcribes no method, it ought to be by bill. *Salk.* 606. *anon'.*

An information, which had been exhibited againſt the defendant, a ſadler, for a penalty given by the 1 *Jac.* 1. *c.* 22. was quaſhed; and by Lord *Mansfield* Ch. J. Wherever a power is given, as is here done, by any ſtatute, to enquire, hear and determine, it always means according to the courſe of the common law by a jury; and the proceeding muſt be by indictment. 4 *Bac. Abr.* 644. cites MS. *R. Rex* v. *Williams*, *Trinity Term* 30 *Geo.* 2.

Rule 4. In the conſtruction of an act of parliament, the intention of the makers thereof muſt be attended to.

Such a conſtruction ought to be put upon a ſtatute, as may beſt anſwer that intent which the makers of it had in view; for, *qui hæret in litera hæret in cortice.* *Plowd.* 232. *William* v. *Barkley.* 11 *Rep.* 73.

The intent of legiſlators is to be collected ſometimes from the cauſe or neceſſity of making an act of parliament; ſometimes from words in other parts of the ſame act; and ſometimes from foreign circumſtances. When this can be diſcovered, it muſt be followed with reaſon and diſcretion, in the conſtruction of an act, although ſuch conſtruction ſeems contrary to the letter of it. *Plowd.* 205. *Stradling* v. *Morgan.* *Lit. R.* 212. 11 *Mod.* 161. 1 *Show.* 491. 1 *Jo.* 105.

Great regard ought, in conſtruing a ſtatute, to be paid to that expoſition which the ſages of the law, who lived about the time or ſoon after it was made, have put upon it; becauſe they were beſt able to judge of the intent of the makers thereof. 2 *Inſt.* 11, 136, 181.

Wherever any words of an act of parliament are obſcure or doubtful, the intent of the legiſlators is, in order to find out their meaning, to be reſorted to. *Plowd.* 57. *Wimbiſh* v. *Talboys.*

Every thing, which is within the intent of the makers of a ſtatute, is, although it be not within the letter, as ſtrongly within the act as that which is within the intent and the letter alſo. *Plowd.* 366. *Zouch* v. *Stowell.* 10 *Rep.* 101.

By the 4 *H.* 7. *c.* 24. it is provided, that the right of any perſon, who was within the age of twenty-one years at the time of levying a fine, ſhall not be thereby bound: yet if a diſſeiſee dies, leaving a wife with child, and the diſſeiſor levies a fine, and afterwards that child is born, ſuch child, although not within the letter of the act, becauſe, as the age of a child

child begins only from the time of its birth, it cannot be ſaid to have been at that time within the age of twenty-one years, is within the intent of it; and his right ſhall be ſaved. *Plowd.* 366. *Zouch* v. *Stowell.*

On the other hand, a thing which is within the letter of an act of parliament, is not within the act, if it is not within the intention of the makers of ſuch act.

The ſtatute of *Marlbridge*, *cap.* 4. prohibits generally the driving a diſtreſs taken in one county into another. It has however been adjudged, that, if land held of a manor lies in another county, the lord may diſtrain upon ſuch land, and drive the diſtreſs into the county where the manor lies; for it would be inconvenient, and a great loſs to the lord, if he could not drive the diſtreſs to his manor; this caſe, although within the words, is not within the meaning of this act of parliament. *Plowd.* 18. *Reniger* v. *Fogaſſa.*

By the ſtatute of *Gloceſter*, *c.* 1. it is provided, "That a diſſeiſee ſhall recover damages, in a writ of entry founded upon a diſſeiſin, againſt him who is found tenant after the diſſeiſor." If a diſſeiſor makes a feoffment by deed to three perſons, and makes livery or ſeiſin to two of them, but the third was not preſent, at the livery; nor ever agreed to the feoffment, nor received any of the profits; he ſhall not, although he is by the death of the other two tenant after the diſſeiſor, be liable to anſwer damages to the diſſeiſee; for the legiſlators could never intend to make him, who never aſſented to the wrong done to the diſſeiſee, anſwerable for it. *Plowd.* 205. *Stradling* v. *Morgan.*

Rule 5. The common law is much to be regarded in the expoſition of ſtatutes.

Wherever an act of parliament makes uſe of any term known at the common law, it ſhall be taken in the ſame ſenſe as it was taken in at the common law. 6 *Mod.* 143. *Smith* v. *Harman.*

To know what the common law was before the making of any ſtatute, whereby it may be known, whether the act be introductory of a new law, or affirmatory of the old, is the very lock and key to ſet open the windows of a ſtatute. *Plowd.* 365. *Zouch* v. *Stowell.* 2 *Inſt.* 301, 308. 3 *Rep.* 13. *Hob.* 83, 97.

In order to conſtrue a ſtatute truly, four things are neceſſary to be underſtood and conſidered: 1. What the common law was before. 2. What the defect or miſchief was, for which the common law had not provided. 3. The remedy that is by the act provided for this miſchief. 4. The true reaſon of this remedy. 5 *Rep.* 7. *Heydon*'s caſe. 1 *Inſt.* 277. 2 *Inſt.* 301.

The beſt expoſition of an act of parliament is to expound it as near to the rule and reaſon of the common law as may be, and by the courſe which that obſerves in caſes of its own. 1 *Will.* 252. *Mills* v. *Williams.* *Plowd.* 365. 2 *Inſt.* 148, 301. 1 *Saund.* 240. 10 *Mod.* 245.

When an act of parliament gives any thing generally, it is given ſubject to the controul and order of the common law. 1 *Show.* 455. *Rex* v. *The Biſhop of London.* *Sav.* 39. *Hard.* 62.

If a new remedy is given by a ſtatute in a particular caſe, this ſhall not be extended to alter the common law in any other than that particular caſe. 11 *Rep.* 59. *Foſter*'s caſe. *Hob.* 298. *Cart.* 36. *Vaugh.* 179.

The ſtatute of 1 *Weſtm. c.* 20. *de malefactoribus in parcis et vivariis*, ſhall not extend to the foreſts; becauſe it is in reſtraint of the common law, and ſuch ſtatutes are to be conſtrued ſtrictly. *Bro. Parl. pl.* 72. 2 *Inſt.* 455. *Vaugh.* 179.

All obſcure ſtatutes ought to be conſtrued according to the rules of the common law. *Win.* 86. *Hickford* v. *Machin.*

Rule 6. Acts of parliament are to be conſtrued according to equity.

Equity is a conſtruction made by the judges, that caſes out of the letter of a ſtatute, which are within the ſame miſchief or cauſe of making the ſtatute, ſhall be within the remedy that is thereby provided; and the reaſon thereof is, that the law-makers could not poſſibly ſet down all caſes in expreſs terms. 1 *Inſt.* 24.

In order to form a right judgment, whether a caſe is within the equity of a ſtatute, it is a good way to ſuppoſe that the law maker is preſent; and that you have aſked him this queſtion; Did you intend to comprehend this caſe? then you muſt give yourſelf ſuch an anſwer as you imagine he, being an upright and reaſonable man, would have given. If this be, that it is within the equity, you may ſafely hold it to be ſo; for while you do no more than he would have done, you do not act contrary to the law, but in conformity thereunto. *Plowd.* 466. *Eyſton* v. *Studd.*

In ſome caſes the letter of an act of parliament is reſtrained by equity, in others it is enlarged, and in others the conſtruction is contrary to the letter.

The firſt of theſe equities is defined by *Ariſtotle* in this manner: *Æquitas eſt correctio legis generatim latæ, qua parte deficit*; or, as the paſſage is explained by *Perionius*, *Æquitas eſt correctio quædam legi adhibita, quia ab ea abeſt aliquid præter generalem opſine exceptione comprehenſionem. Plowd.* 465. *Eyſton* v. *Studd.*

The words of 2 *Weſtm. c.* 11. are general, that all bailiffs and receivers, who in paſſing their accounts before auditors aſſigned ſhall be found in arrear, may be committed to the next gaol: yet if an infant bailiff or receiver be found in arrear, he ſhall not be committed; for he is not, by reaſon of his want of diſcretion, within the equity of this ſtatute. *Plowd.* 364. *Zouch* v. *Howell.*

If a law is made, that whoſoever does a certain thing ſhall be adjudged a felon, and ſuffer death; yet where a madman does this, he ſhall be excuſed: for as this action is not to be imputed to him, but to an involuntary ignorance brought upon him by the hand of God, he is not within the reaſon of the law. *Plowd.* 465. *Eyſton* v. *Studd.*

But, if ſuch prohibited thing is done by a drunken perſon, it is felony; and, altho' he did not when drunk know what he did, he ſhall, becauſe he brought this ignorance upon himſelf by his own folly, ſuffer death; he does indeed deſerve to be doubly puniſhed; for he has been guilty of two offences, by ſetting an evil example, in being drunk, to others, and by

by doing the thing which the law forbids to be done. *Plowd.* 19. *Reniger* v. *Fogaſſa.*

Such actions as proceed from involuntary ignorance are, in legal phraſe, ſaid to be done *ex ignorantia*; others, which are owing to ignorance that might have been avoided, *ignoranter. Plowd.* 19. *Reniger* v. *Fogaſſa.*

That ſpecies of equity which enlarges the letter of a ſtatute is thus defined: *Æquitas eſt verborum legis directio efficiens, cum una res ſolummodo legis cavetur verbis, ut omnis alia in æquali genere eiſdem caveatur verbis. Plowd.* 467. *Eyſton* v. *Studd.*

The words of the 13 *Ed.* 1. are, *Uſe yourſelves circumſpectly in all matters touching the Biſhop of* Norwich: yet this ſtatute, although only the Biſhop of *Norwich* is named, has been conſtantly extended by equity to all other biſhops. *Plowd.* 36. *Platt* v. *The Sheriff of London.*

So the remedy given by the 9 *Ed.* 3. *c.* 3. againſt executors, is extended by equity to adminiſtrators; becauſe they are within the reaſon of this ſtatute. *Plowd.* 467. *Eyſton* v. *Studd.*

Judges have frequently expounded a ſtatute contrary to the words thereof, for the ſake of making it agree with reaſon and equity. *Plowd.* 109. *Fulmerſton* v. *Steward. Hob.* 349.

The 1 *Ed.* 2. *ſt.* 2. makes it felony, if a priſoner confined for felony breaks a priſon: yet if the priſon is on fire, and he breaks it in order to ſave his life, he ſhall be excuſed by the law of reaſon, although this action is contrary to the words of the act of parliament. *Plowd.* 13. *Reniger* v. *Fogaſſa.*

By 2 *Weſtm. c.* 12. the party acquitted upon an appeal may recover damages againſt all who have been abettors of the appeal: but if a ſon abets his mother in bringing an appeal, he ſhall not, altho' he acts contrary to the words of this ſtatute, be liable to damages; for the common law and reaſon both ſay, that it is his duty to aid and abet his mother. *Plowd.* 88. *Strange* v. *Croker.* 2 *Inſt.* 84.

But an act of parliament, which is to take away a remedy that the party has at the common law ought not to be conſtrued by equity. 10 *Mod.* 282. *Hammond* v. *Webb.*

When the words of law do not extend to an inconvenience rarely happening, and do to thoſe inconveniencies which often happen, they are not to be ſtrained further than they reach: but that caſe is to be conſidered as a *caſus omiſſus*; for the law regardeth *quæ frequentius accidunt. Vaugh.* 373. *Bole* v. *Horton.*

A ſtatute ſhall not be expounded by equity to overthrow an eſtate. 3 *Leon.* 133. *Worth* v. *The Counteſs of Suſſex.*

Statutes of explanation ſhall be *conſtrued only according to the words, and not with any equity* or intendment; for there cannot be an explanation upon an explanation, as it was held in 3 *Rep.* in *Butler* and *Baker*'s caſe; and *Jones* ſaid it was ſo reſolved 43 *Eliz.* in the court of wards, by the opinion of the chief juſtices. See *Cro. Car.* 33. *pl.* 6. *Paſch.* 2 *Car.* a caſe out of the court of wards. *Anon.* 3 *Rep.* 31. *a.* accordingly, by *Wray* Ch. J. in *Butler* and *Baker*'s caſe; for if any expoſition ſhould be made againſt the direct

rect letter of the expoſition made by parliament, there will be no end of expoſitions *And.* 349. *S. C.* And ſee *Jo.* 344, 345. *Trin.* 15 *Car. B. R. James* v. *Tintney.*

It muſt be conſtrued preciſely, and no new interpretation can be made of it. *Per Hutton* J. *Win.* 85. in caſe of *Hickford* v. *Machin*, cites *Butler* and *Baker*'s caſe.——*S. P. Arg. Jo.* 35. in caſe of *Godfrey* v. *Wade*, cites *S. C.* of *Butler* and *Baker.*

When one act is made explanatory of another, the *court cannot carry explanation farther* than is expreſſed in that act; but in an original ſtatute, the court will make conſtruction according to equity. *Per Cur. Carth.* 396. *Dalbury Pariſh* v. *Foſton.*——*Comb.* 410. *Hill.* 9 *W.* 3. *B. R. S. C.* and *S. P.*——*S P. Poors Settlements* 89. *Pl.* 121. in caſe of the pariſh of *Burclear* v. *Eaſt Woodhay.*

Hobart Ch. J. denied that ſtatutes of explanation ſhall always be taken literally; for it is impoſſible that an act of parliament ſhould provide for every inconvenience which happens. *Winch* 123 *Hill.* 22 *Jac. C. B.* in caſe of *Hilliard* v. *Saunders.*—*S. P. Per Hobart.* 2 *Rol. Rep.* 500, 501.

But where the ſtatute of explanation is *doubtful*, it may have ſuch expoſition as ſhall be taken to ſtand with the *ſcope* and *intention* of the act, and which ſhall be *reaſonable.* See *Jo.* 35, 38, 39. *Trin.* 21 *Jac. C. B. Godfrey* v. *Wade.*——They are always interpreted beneficially. *Arg.* 3 *Rep.* 75. in dean and chapter of *Norwich*'s caſe.

Rule 7. Such acts of parliament as are of public concern ought to have a liberal conſtruction.

The crown is bound by the general words of acts of parliament, made for the maintenance of religion, the advancement of learning, or the ſupport of the poor: becauſe ſuch acts, in which the public are intereſted, muſt be ſo conſtrued that they may be effectual. 11 *Rep.* 71. *Magdalen College*'s caſe. *Str.* 517, 518, 519.

Every word in an act of parliament ſhall be taken moſt ſtrongly againſt the king. *Kelw.* 198. *pl.* 1.

Statutes made *pro bono publico* ſhall be expounded in ſuch a manner, that they may, as far as poſſible, attain the end propoſed. *Sti.* 253, 258. *Pierce* v. *Hopper.*

The *New River* water act was held, although only the city of *London* is therein mentioned, to extend to places adjacent; becauſe all acts made for the conveniency of the public ought to have a liberal conſtruction. 2 *Vern.* 431. *New River Company* v. *Graves.*

But it has been held, that an act of parliament for diſcharging inſolvent debtors ought to be conſtrued ſtrictly, becauſe it gives away the right of the ſubject; and by *Holt* Ch. J. Let an act of parliament be ever ſo charitable, yet if it gives away the property of the ſubject, it ought not to be countenanced. 12 *Mod.* 513. *Callady* v. *Pelkington.*

Rule 8. Remedial acts of parliament muſt be expounded liberally.

Conſtruction muſt be made of a ſtatute in ſuppreſſion of the miſchief, and in advancement of the remedy. 4 *Inſt.* 381. *b.*

All ſtatutes made for the ſuppreſſion of fraud, and to give a more ſpeedy remedy for right, are to be conſtrued liberally, becauſe ſuch are for the advancement of juſtice. *Plowd.* 57. *Wimbiſh* v. *Talboys.*

It is the buſineſs of judges always to put ſuch a conſtruction upon an act of parliament, as may redreſs the miſchief and advance the remedy, and to ſuppreſs all ſubtle inventions and evaſions for the continuance of the miſchief, and *pro privato commodo*; and to give ſtrength and life to the cure and remedy, according to the true intent of the makers of the law, *pro bono publico*. 3 *Rep.* 7. *Heydon*'s caſe. 1 *Rep.* 123. 11 *Rep.* 71. *Cro. Car.* 533.

A fine levied by a huſband only, who is ſeiſed in right of his wife, is within the letter of the ſtatute of *Glouceſter*; but, as the heir was thereby barred of the inheritance of his mother by the warranty of his father, the conſtruction has been, in order to prevent this miſchief, that ſuch a fine with warranty ſhall not bind the heir, unleſs aſſets deſcend. 1 *Inſt.* 381.

By the 13 *Eliz. cap.* 10. it is enacted, "That from henceforth all leaſes, gifts, grants, feoffments, conveyances or eſtates to be made, had, done or ſuffered, by any maſter and fellows of a college, *&c.* to any perſon or perſons, bodies politic or corporate, other than for the term of twenty-one years or three lives, ſhall be utterly void and of none effect to all intents, conſtructions and purpoſes." After the making of this ſtatute, the maſter and fellows of *Magdalen College* granted certain premiſſes by indenture to the queen, her heirs and ſucceſſors, for ever, with condition that ſhe ſhould, before a day mentioned in the indenture, convey and aſſure the ſame, by letters patent under the great ſeal, to *Benedict Spinola*, a merchant of *Genoa*; and the queſtion was, if this grant to the queen was good? or, in other words, whether the queen was bound by the general words of this ſtatute? It was laid down, that where the crown has any prerogative, right, title or intereſt, this ſhall not be barred by the general words of an act of parliament: but that in this caſe, as the queen was deprived of any eſtate, right, title, intereſt or prerogative which ſhe had in theſe premiſſes, before making of this ſtatute, ſhe was bound thereby; and that this conſtruction was neceſſary, for the preventing of ſubtle inventions and envaſions, by which this act, made for the maintenance of religion and the advancement of arts and ſciences, might be eluded. 11 *Rep.* 74, 75. *Magdalen College*'s caſe.

Rule 9. Penal acts of parliament are to be ſtrictly conſtrued.

The rules of the common law will not ſuffer the general words of a ſtatute to be reſtrained, to the prejudice of him upon whom a penalty is to be inflicted: but there are a multitude of caſes, where ſuch general words ſhall be reſtrained in his favour. *Plowd.* 17. *Reniger* v. *Fegaſſa*. *Bro. Parl. pl.* 13.

Wherever a greater puniſhment is ordained by an act of parliament for a ſecond offence, the meaning is after conviction and judgment for the firſt; for penal ſtatutes are to be conſtrued ſtrictly; and the firſt appeareth to be no offence, till judgment hath been given againſt it. 2 *Inſt.* 468.

The ſtatute which gave attaint in a plea real, being a penal ſtatute, was never extended to a plea perſonal. *Bro. Parl.* 20.

All ſtatutes that give coſts are to be conſtrued ſtrictly; for coſts are a kind of penalty. *Salk.* 205. *Cone* v. *Bowles*.

But

But however true it may in general be, that penal laws are to be conſtrued ſtrictly; yet even in theſe the intention of the legiſlature is to be regarded. 3 *Rep.* 7. *Heydon*'s caſe. 8 *Mod.* 65.

It is declared by the 25 *Ed.* 3. to be treaſon for a ſervant to kill his maſter. A queſtion being made upon this ſtatute, Whether a ſervant who had killed his maſter's wife, ought to have judgment to be drawn and hanged, or only to be hanged? It was held by all the judges, that this is treaſon, and the judgment was, that he ſhould be drawn and hanged: And by *Coke* J. Although ſtatutes, which encreaſe a puniſhment beyond what it was at the common law, are penal, and ought not to be extended by equity; yet the words of theſe ought to be conſtrued according to the intent of the makers of them. *Plowd.* 86. *Strange* v. *Croker.*

The *ſtat.* 7 *H.* 7. *c.* 1. and the 3 *H.* 8. *c.* 1. make the departure of a ſoldier from his captain, without licence, felony. A queſtion ariſing whether the departure of a ſoldier without licence from his conductor, to whom he was delivered to be brought to the ſea ſide, was felony? it was reſolved, by nine judges againſt three, that it was felony; for that a conductor is a captain within the intention and meaning of theſe ſtatutes; and that penal ſtatutes, when made for the public ſervice and good of the king and realm, may very well be taken liberally, according to the intent of the makers of them. *Cro. Jac.* 71. the ſoldiers caſe.

An offender, who had been guilty of arſon, was ouſted of his clergy, notwithſtanding that it was not expreſly taken from him by ſtatute; and the book adds, there are many caſes in our books, where penal ſtatutes have been taken by intendment for the ſuppreſſion of a miſchief, the advancement of juſtice, and the putting a ſtop to crimes and heinous offences. 11 *Rep.* 34, 35. *Poulter*'s caſe.

All remedial ſtatutes, which are made for the good of the public, ought, although they are penal, to receive an equitable expoſition. 2 *Brown.* 110, 111, 116.

Statutes that are penal to particular perſons, may, if beneficial to all others, have an equitable conſtruction; for every ſtatute is penal to ſome perſon: yet, if the extending it by equity is more advantageous than prejudicial to the greater part of the people, it may by the rules of law be ſo extended. *Plowd.* 36. *Platt* v. *The Sheriff of London. Plowd.* 59. 10. *Mod.* 117. 2 *Brown.* 302. 10 *Mod.* 282. *Hammond* v. *Webb.*

It was inſiſted, that the ſtatute againſt ſimony being a penal law, ought to receive no aid from a court of equity: *Sed per Wright* Lord Keeper; This court will aid remedial laws, notwithſtanding they are penal, not by making them more penal, but to let them have their proper effect. *Prec. in Chanc.* 215. *Attorney General* v. *Sudell.*

Divers other rules to be obſerved in the conſtruction of acts of parliament.

Such an expoſition is to be made of any act of parliament, as does not ſuffer it to be eluded. *Hob.* 97. *Moore* v. *Huſſey.* 3 *Rep.* 7. 11 *Rep.* 73.

All ſtatutes are to be conſtrued for the preventing, as much as poſſible, of delay. 2 *Inſt.* 611, 614.

Acts of parliament are to be conſtrued, that no man, who is innocent or free from injury or wrong, be puniſhed or endamaged. 1 *Inſt.* 360.

No ſtatute ſhall be interpreted ſo as to be inconvenient, or againſt reaſon. *Cart.* 136. *Hughes* v. *Hughes.* 1 *Inſt.* 97. 5 *Rep.* *Cawdrie*'s caſe.

By the 12 *Car.* 2. *c.* 17. all parſons preſented in the late times, who ſhould conform as in that act was directed, were to be confirmed in their churches, notwithſtanding any act or thing whatſoever: yet it was held, that this act did not extend to the confirming one who had been ſimoniacally promoted. *Sid.* 232. *Crawley* v. *Phillips.*

If the meaning of an act of parliament is doubtful, the conſequences are to be conſidered in the conſtruction thereof: but where it is plain, no conſequences are to be regarded; for this would be aſſuming a legiſlative authority. 10 *Mod.* 344. *The Queen* v. *Simpſon.*

Where the penning of a ſtatute is dubious, long uſage is a juſt medium to expound it by; for *jus et norma loquendi* is governed by uſage, and the meaning of things ſpoken or written muſt be, as it hath conſtantly been received to be; but if uſage hath been againſt the obvious meaning of an act of parliament, by the only and common acceptation of the words, then it is rather an oppreſſion of thoſe concerned than an expoſition of the act. *Vaugh.* 169, 170. *Shepherd* v. *Goſneld.*

Statutes which give any new remedies ſhall not have a liberal conſtruction. 2 *Sid.* 63. *Pool* v. *Neel.*

An act of parliament creating any new juriſdiction muſt be conſtrued ſtrictly. *Stra.* 258, 260. *Pierce* v. *Hopper.* 10 *R.* 75.

It was held by the court of exchequer, that the ſtatute of 6 *Geo.* 1. *cap.* 21. which gives the commiſſioners of exciſe a juriſdiction to condemn in a ſummary way certain goods therein mentioned, ſhall be conſtrued very ſtrictly; becauſe it breaks in upon the ancient juriſdiction of this court. *Bunb.* 106. *Warwick* v. *White.*

A private act of parliament, which only relates to one particular thing, is to be interpreted literally. 2 *Mod.* 67. *Threadneedle* v. *Lynam.*

How perſons guilty of diſobedience to an act of parliament may be puniſhed.

Whenſoever a ſtatute giveth a forfeiture or penalty againſt him who wrongfully detaineth or diſpoſſeſſeth another of his duty or intereſt, in that caſe, he that hath the wrong ſhall have the forfeiture or penalty, and ſhall have an action therefore upon the ſtatute at the common law; for the king ſhall not have the forfeiture in that caſe; and ſo it was adjudged in the exchequer, upon conference with the other judges, in an information, for the treble value, for not ſetting out the tithes at *Iclington* in the county of *Cambridge.* 1 *Inſt.* 159. 3 *Lev.* 290.

As every act of parliament made againſt any injury, miſchief or grievance, doth impliedly give a remedy, the party injured may have an action grounded upon that act, altho' no remedy is expreſly given. 2 *Inſt.* 55, 74. 10 *Rep.* 75.

Wherever a ſtatute commands or prohibits a thing for the advantage of any perſon, that perſon ſhall have an action upon ſuch ſtatute to recover ſatisfaction for any injury done him contrary thereto; for it would

be ſtrange if a perſon could in ſuch caſe have no remedy but in equity. 6 *Mod.* 26. *Anon.*'

If a penalty is given by ſtatute, but no action for the recovery of it is therein given, an action of debt will lie for ſuch penalty. *Poph.* 175. *Welden* v. *Veſey.*

If any thing is prohibited by an act of parliament under a certain penalty, and this penalty, or any part of it, is given to him who will ſue for it; any perſon, although not particularly injured by the offence, may bring an action or information *qui tam* for it. 2 *And.* 127, 128. *Agard* v. *Tandiſh.* 2 *Hawk.* 265.

But where a penalty is given by ſtatute to be recovered in any court of record, this can only be recovered in the courts at *Weſtminſter*; for being a penal law, it muſt be taken ſtrictly, and the courts at *Weſtminſter* are thoſe in which the king's attorney general attends. *Salk.* 178. *Walwyn* v. *Smith.*

In an action upon a ſtatute giving a penalty, againſt ſeveral defendants, only one penalty ſhall be recovered. *Cro. Eliz.* 480. *Partridge* v. *Naylor.*

But if a conviction be upon a ſtatute, which gives a forfeiture, each defendant muſt pay the forfeiture; for the penalty in this caſe is not in the nature of a ſatisfaction to the party injured, but a puniſhment of the offender; and although debts are joint, crimes are ſeveral. 1 *Salk.* 182. *The Queen* v. *King.*

When an act of parliament commands or prohibits any thing generally, the perſon guilty of diſobedience to it, beſides being anſwerable in an action to the party thereby injured, is alſo liable to be indicted for his contempt of the law. *Cro. Eliz.* 655. *Croucher*'s caſe. 2 *Inſt.* 131, 163. 1 *Hawk.* 60.

But if the thing commanded or prohibited can only be prejudicial to one or two perſons, as if it be to repair the bank of a river, for want of doing which the ground of a certain perſon is overflowed, no indictment lies; the remedy here being by an action upon the caſe. 2 *Sid.* 209. *Rex* v. *Pawlyn.*

So if a ſtatute extends to all perſons, but chiefly concerns diſputes of a private nature, as thoſe relating to diſtreſſes between lords and tenants, an offence againſt ſuch is not indictable. 1 *Mod.* 71. *Rex* v. *Leghinham. Ibid.* 288.

If an act of parliament only inflicts a new puniſhment upon the perſon guilty of an offence which was before puniſhable at the common law, ſuch offence is ſtill puniſhable, as it was before the making this act. The crime of forgery, notwithſtanding the 5 *Eliz.* is at this day puniſhable in the ſame manner as it was at the common law. *Fitzg.* 66. *Rex* v. *Woolſton.* 10 *Mod.* 337.

But an indictment againſt the defendant, for acting as a juſtice of peace, not having lands to the value of forty pounds *per ann.* was held bad; becauſe a penalty is given; and the method of recovering of it is preſcribed in the ſtatute which prohibits this. *Et per Cur.* Where a ſtatute appoints

appoints a penalty for the doing of a thing which was no offence before, and directs how it ſhall be recovered, it ſhall be puniſhed by that means, and not by indictment. *Cro. Jac.* 643. *Caſtle's* caſe. *Mich.* 21 *Jac.*

Since this caſe it has been laid down, that if the thing commanded or prohibited by act of parliament is of a public concern, an offender may be indicted, although the offence is a new created one, and a penalty with the manner of recovering it is appointed; for that the giving other affirmative remedies ſhall not without the negative words, "and not otherwiſe," take away the general way of proceeding, which the law appoints for all offences. 1 *Mod.* 34. *Crofton's* caſe. *Hill.* 21 *Car.* 2. 1 *Vent.* 63. *Sid.* 209.

The former, is, however, the better opinion; for it ſeems to be now ſettled, that if any ſtatute appoints a particular method of proceeding againſt an offender, as by commitment, action, information, *&c.* without mentioning an indictment, no indictment lies; becauſe, as the other methods of proceeding are only mentioned, that by indictment ſeems to be impliedly excluded. 2 *Hawk.* 211. *Show.* 398, 399. *Fitzg.* 47.

But it has been adjudged, that if ſuch a ſtatute gives a recovery by action, bill, plaint, information or otherwiſe, an indictment may be upon it. 2 *Hawk.* 211.

By the 12 *Geo.* 1. *c.* 35. a penalty of 20 *s. per* thouſand is given for burning bricks and ſtock bricks together; but there is in this act no appropriation of the penalty, nor any method of recovering it direct. Upon demurrer to an indictment for this offence, the court held, that this, like every unappropriated penalty, was in the nature of a debt to the crown, and ſuable for in a court of revenue, but that this offence was not indictable. *Stra.* 828. *Rex* v. *Malland.*

Whenever a ſtatute makes any thing criminal which was not ſo before, an information will, although not given by expreſs words, lie. 1 *Mod.* 5. *Troy's* caſe.

II. *An hiſtorical Account of the Reporters and principal Authors of Treatiſes on the Laws and Cuſtoms of* England.

AS there are many abbreviations in this work of the names of the reporters and other authors, of which many readers may want an explanation, it hath been thought neceſſary to ſubjoin the following hiſtorical account of our reporters and principal authors of treatiſes on the laws and cuſtoms of *England*.

For a long time after the courts of juſtice were ſettled at *Weſtminſter-Hall*, we find no regular collection of printed caſes, judicially argued and adjudged there. The oldeſt collection of reports we have is that which was originally compiled, Mr. *Selden* ſays, by *Richard Winchedon*, who lived in the reign of *Edward* II. when the caſes herein reported were adjudged. Theſe Reports were ſolemnly recommended to the preſs by that great oracle of the law, the Lord Chief Juſtice *Hale*, upon occaſion of the authorities cited out of them in *Sacheverel* and *Frogatt*'s caſe, and were publiſhed by Sir *John Maynard*, ſerjeant at law, with the approbation of the chancellor and all the judges.

The reports of adjudged caſes, which *Bracton* calls *The Judgments of the Juſt*, were eſteemed ſo beneficial to the public, that ſome of our kings took care to tranſmit them to poſterity; and for that purpoſe *Edward* III. and ſeveral of his ſucceſſors in their reſpective reigns, appointed four able and induſtrious men, probably choſen out of the inns of court, to report the judicial deciſions in the ſuperior courts of juſtice; that thoſe judgments, which were given there, might be eſtabliſhed by time and uſage, that ſimilar caſes might receive uniform and certain determinations; and *that all the judges and juſtices in all the ſeveral parts of the realm might, as it were, with one mouth, in all mens actions, pronounce one and the ſame ſentence.*

The reporters, thus appointed by the ſtate, had fixed ſalaries from the government as a proper reward for their labours, which have been long ſince publiſhed in ſeveral volumes, called, *The Year Books, and Terms or Annals of the Law*, and contained the arguments of council at the bar, and the reſolutions of the judges on the bench, from firſt *Edward* III. to twelfth *Henry* VIII. being near two hundred years; after which time this method was diſcontinued. It is very remarkable that there are no memorials extant who thoſe reporters were, not ſo much as the initial letters of their names; but Lord *Coke* extols their diligence, and metaphorically tells us, that *if it had not been for their writings, the judgments of ſo many ſages of the law had, with their bodies, been worn away with the worm of oblivion.*

The next reporter in order of time was Mr. *Plowden* of the *Middle Temple*, who collected two volumes of caſes from 2 *Edward* IV. to 22d *Elizabeth*, for his private uſe; but having lent his manuſcript to ſome

lawyers whoſe clerks ſat up whole nights to tranſcribe it, deſigning it for the preſs; he therefore reſolved to publiſh them himſelf.

About two years afterwards the nephews and executors of Sir *James Dyer*, chief juſtice of the court of Common Pleas, publiſhed his Reports, which were compoſed of very ſhort notes; the buſineſs of his office not permitting the author to enlarge and correct them. But Lord *Coke* ſays, *they are leſs painful, but not leſs profitable than more elaborate works.*

About the ſame time Sir *John Coke*, having got Mr. *Keilway*'s manuſcript of law caſes, committed ſo many of them to the preſs as he thought were proper to be publiſhed.

In the ſame year Lord Chief Juſtice *Coke*, *having for twenty years before obſerved the true reaſons of ſuch matters of law wherein he was of counſel, and which were adjudged upon great and mature deliberation*, publiſhed the firſt volume of his Reports, and afterwards conſented to the printing ten volumes more, which were nineteen years in publiſhing. But notwithſtanding the character of this great judge, his works were cenſured even in his life-time; for being removed from the ſeat of chief juſtice of *England* in *Michaelmas* term 14 *Jac.* 1. on account of a controverſy that happened between him and the lord chancellor *Egerton*, a commiſſion was granted to Sir *Henry Montague*, his immediate ſucceſſor in that place, to review his Reports; ſome part whereof, he tells us himſelf, *were written in the tempeſt of buſineſs, and therefore he could not poliſh them as he deſired.*

There was no report publiſhed for the ſpace of twenty-two years after Lord *Coke*'s laſt volume, though he encouraged the lawyers of that age to follow his example, *and regiſter in books the ſayings and doings which in their time were worthy of note and obſervation:* but none would undertake it except Sir *Henry Hobart*, his immediate ſucceſſor in the common pleas, who collected a volume of caſes adjudged in that court, but did not think fit to publiſh them in his life-time.

Soon after the death of *Charles* I. there came forth a flying ſquadron of reports, of which Mr. *March* led the van; but the beſt of that number were ſaid to be the caſes collected by juſtice *Croke*, and publiſhed by his ſon-in-law Sir *Harbottle Grimſtone*, during the uſurpation; in which time there were twenty-one books of Reports * publiſhed in the names of judges, ſerjeants at law, prothonotaries, and other lawyers of leſs character.

* March	1648		Lane		
Tothil	1649		Hetley	1657	
Cro. Car.	1651		1 Bulſtrode		
Brownlow			Cro. Jac.		
Godbolt	1652		2 Bulſtrode	1658	
Goldſborough	1653		Style		
Popham			1 & 2 Leonard		
Hutton	1656		Ley		
Owen			Bridgman	1659	
Noy			3 Bulſtrode		
Winch	1657				

Soon

Soon after the reſtoration of *Charles* II. a check was given to further publications, by a ſtatute prohibiting all law books to be printed without the licence of the lord chancellor or keeper, the chief juſtice of each court, the chief baron, or one or more of them, or of one by their appointment; which act expired in the reign of king *William*.

In conformity to this law *, moſt of the Reports which were printed whilſt it was in being, were licenſed by the chancellor and judges; but the firſt part of *Anderſon*'s Reports, and the firſt Modern had not that advantage.

In the reign of *James* II. ſome Reports † appeared, which were approved in a very unuſual manner, a year after the books themſelves were publiſhed, with the bare allowance only of the judges, without certifying (as is common in ſuch caſes) *the great judgment, learning and wiſdom of the author.*

After the Revolution, and during the reigns of king *William*, queen *Anne*, king *George* I. king *George* II. and his preſent majeſty, many Reports ‡ have been publiſhed.

* Yelverton
Cro. Eliz.
Bendloe — 1661
Latch — 1663
Moore — 1663
1 Anderſon — 1664
2 Anderſon — 1665
Jones (Sir Will.) — 1675
1 Roll
3 Leonard — 1675
2 Rolle — 1676
Vaugh. — 1677
Palmer — 1678
1 Mod. — 1682
1 Siderfin
Littleton — 1683
† 2 Siderfin — 1684
Keble — 1685
Saunders, 2 vols — 1686
Aleyn — 1688
Carter — 1688
Benloe — 1689
‡ Hardreſs — 1693
Jones (Sir Thomas) — 1695
Ventris, 2 vols. — 1696
Raymond (Sir Thomas) — 1696
Caſes in Chancery — 1697
2 Mod. — 1698
3 Mod. — 1700
Levinz — 1702
4 Mod. — 1703
Lutwych, 2 vols. — 1704
1 Shower — 1708
1 Kelyng — 1708
5 Mod. — 1711
6 Mod. — 1713
Farreſley, or 7 Mod. — 1715
1ſt and 2d Salkeld — 1717
Nelſon — 1717
2 Shower — 1720
Comberbach — 1724
Vernon, 2 vols. — 1726
Skinner — 1728
Carthew — 1728
8 & 9 Mod. — 1730
Fitzgibbon — 1732
Preced. in Chan. — 1733
Reports in Chan. — 1736
Lucas, or 10th Mod. — 1736
Caſes in K. Will. and Rep. in Q. An. (11 & 12 Mod.) 2 vols. — 1737
Holt's Determ. — 1738
P. Williams, 2 vols — 1740
Select Caſes in Chan. — 1740
Barnardiſton — 1741
Freeman — 1742
Ca. Sett. and Rem. — 1742
Gilbert — 1742
Ld. Raym. 2 vols. — 1743
Moſeley — 1744
Comyns — 1744
Reports in C. P. — 1747
Forteſcue — 1748
3 Williams — 1749
Barnes — 1754
Andrews — 1754
Strange, 2 vols. — 1755
Bunbury — 1755
2 Kelyng — 1764
Rep. in B. R. in time of Lord Hard. — 1767
Atkyns, 3 vols, — 1766, 1767, 1768

What

What hath been ſaid will ſuffice with reſpect to our reporters; the following are the names of the principal lawyers who have written on our ancient laws and cuſtoms.

Regiſter. This book is in the ſtatute of *Weſtm.* 2. *c.* 4. called *Regiſtrum de Cancellaria*; becauſe it containeth the forms of writs at the common law, that iſſue out of the chancery, *tanquam ex officina juſtitiæ.* There is a regiſter of original writs, and a regiſter of judicial writs; but when it is ſpoken generally of the Regiſter, it is meant of the Regiſter original. *Co. Lit.* 16. *b.* I have, ſays Lord *Coke*, in his preface to 3 *Rep.* a regiſter of our writs original, written in the reign of king *Henry* the Second, containing the original writs which were long before the Conqueſt, and yet alſo remaining in force, (ſuch excepted as have been inſtituted or altered by acts of parliament ſince that time) which is the moſt ancient book extant of the common law, and ſo ancient as the beginning thereof cannot be ſhewed.

Glanvil was a learned lawyer, and chief juſtice of *England* in the reign of *Henry* the Second. He wrote a treatiſe in *Latin* of the laws and cuſtoms of this realm, which is the ancienteſt of any extant, except the Regiſter, touching that ſubject. He died in the days of *Richard* I. at the ſiege of *Acres*, on the coaſt of *Paleſtine*, being with him in his voyage to the *Holy Land.*

Bracton was renowned for his knowledge both in the common and civil laws. He lived in the reign of *Henry* III. and wrote a treatiſe on the laws and cuſtoms, and was, as ſome ſay, chief juſtice of *England.*

John Britton lived in the days of king *Edward* I. at whoſe command, and by whoſe authority, he wrote a treatiſe on the laws of this realm. The book runs in that king's name, as if it had been penned by himſelf, in imitation of the Inſtitutions, which *Juſtinian* aſſumes to himſelf, tho' compoſed by others. Sir *Edward Coke*, in 4 *Rep.* 126. and 6 *Rep.* 67. ſays, that he wrote the book in the fifth year of *Edward* I. Mr. *Gwyn* in the preface to his reading ſays, that this *John Britton* was biſhop of *Hereford.*

Fleta is a feigned name of a learned lawyer, who wrote a book of the common law of *England* and other antiquities, in the *Fleet*; and therefore termed it *Fleta.* He lived in the days of *Edward* II. and *Edward* III.

Sir *John Forteſcue*, who was lord chancellor in the reign of *Henry* VI. wrote a book in commendation of our common law, intituled, *De laudibus legum Angliæ.*

The book called *Doctor and Student* was written in the reign of *Henry* VIII. by one *St. German.*

Accessary. See Principal and Accessary.

Addition.

ADDITION, (*additio*) signifieth in our common law, a title given to a man, besides his christian and surname, shewing his estate, degree, mistery, trade, place of dwelling, *&c.* As, for example, additions of estate are *yeoman*, *gentleman*, *esquire*, and such like; additions of degree are names of dignity, as *knight*, *earl*, *marquis*, *duke:* And additions of mistery are, *scrivener*, *painter*, *mason*, *carpenter*, and all others of like nature; for mistery, is the craft, or occupation whereby a man gets his living: Additions of towns, as *London*, *Kingston*, *Chester*, &c. and where a man hath a houshold in two places, he shall be said to dwell in both of them; so that his addition in either shall suffice. Additions were ordained, that one might not be vexed or troubled by the outlawry of another, but that by reason of the certain additions, every person may be known, and bear his own burden. *Cowell, edit.* 1727.

It seems, that the common law in no case required any other description of a person, than by his christian name and surname, unless he were of the degree of a knight, or some higher dignity; but the names of dignity were always required, being marks of distinction imposed by publick authority, and therefore make up the very name of the person to whom they are given, and they are of two sorts; 1st, Such marks of distinction as exclude the surname, so that the persons may not seem to be of any common family; and such are the names of earls, dukes, *&c.* 2dly, Such marks of distinction as are also imposed by the supreme power, and parcel of the name itself, but do not exclude the surname, such as knight, baronet, *&c.* and these marks of distinction were always to be made use of as part of the name in all legal proceedings; and so curious was the law herein, that if a plaintiff in any action, gained a new name of dignity, hanging a writ, he made it abatable; but this inconvenience is remedied by *Stat.* 1 *Ed.* 6. *c.* 7. *sect.* 3. by which it is enacted, "That if any plaintiff, "in any manner of action, shall be made a duke, archbishop, marquis, "earl, viscount, baron, bishop, knight, justice of either bench, or ser-"jeant at law, depending the same action, that such action for such cause "shall not be abatable or abated." 2 *Inst.* 665. 2 *Roll. Abr.* 469. 1 *Show.* 392. But it hath been holden, that the dignity of baronet is not

within the ſtatute, becauſe there was no ſuch dignity at the time of making it. 1 *Sid.* 40. *Lit. Rep.* 81. *Cro. Car.* 104.

But names of worſhip, ſuch as eſquire, gentleman and yeoman, ſince they are only names of diſtinction, in popular uſe, and not given by the publick authority of the ſupreme power, the law doth not count them parcel of the name, and therefore were not neceſſary at common law. 2 *Inſt.* 666.

In the time of *Hen.* 5. it was perceived, that the chriſtian and ſurname were not ſufficient determinations of perſons, and did not ſufficiently avoid the confuſion that might happen by the miſtake of perſons; and that an innocent perſon might, upon a proceſs or execution, be diſtrained upon having the ſame name, with the real defendant; to remedy which, the following ſtatute was made. 2 *Inſt.* 670. 2 *Rol. rep.* 225.

Stat. 1 Hen. 5. c. 5. *Stat.* 1 *Hen.* 5. *c.* 5. [*An. Dom.* 1413. *intituled,*] "In which original writs, additions of the defendants names ſhall be put."

"Item, it is ordained and eſtabliſhed, that in every original writ of actions perſonals, appeals, and indictments, and in which the exigent ſhall be awarded, to the names of the defendants in ſuch writs original, appeals and indictments, additions ſhall be made of their eſtate or degree, or miſtery, and of the towns, or hamlets, or places, and counties, of the which they were, or be, or in which they be or were converſant; and, if by proceſs upon the ſaid original writs, appeals, or indictments, in the which the ſaid addition ſhall be omitted, any utlagaries [outlawries,] be pronounced, that they be void, fruſtrate, and holden for none; and that before the utlagaries be pronounced, the ſaid writs and indictments ſhall be abated by the exception of the party, where in the ſame the ſaid additions be omitted. Provided always, that though the ſaid writs of additions perſonals be not according to the records and deeds, by the ſurpluſage of the additions aforeſaid, that for that cauſe they be not abated; and that the clerks of the *Chancery*, under whoſe names ſuch writs ſhall go forth written, ſhall not leave out or make omiſſion of the ſaid additions as is aforeſaid, upon pain to be puniſhed, and to make a fine to the king, by the diſcretion of the chancellor."

Every original writ] Writ (*breve*) is the king's precept, whereby any thing is commanded to be done touching a ſuit or action, as the defendant or tenant to be ſummoned, a diſtreſs to be taken, *&c.* And theſe writs are differently divided in divers reſpects; ſome in reſpect of their order, or manner of granting, are termed *original*, and ſome *judicial*. *Original* writs are thoſe that are ſent out for the ſummoning of the defendant in a perſonal, or the tenant in a real action, before the ſuit begins, or rather to begin the ſuit: thoſe are *judicial*, which are ſent out by order of the court where the cauſe depends, upon occaſion, after the ſuit begun. And the *judicial* are known from the *original* thus: the *teſte* of the former bears the name of the chief juſtice of that court whence it iſſues; whereas the original in the *teſte* has the name of the king, and according to the nature of the action, they are either *perſonal* or *real*: *Real* are either touching the

poſſeſſion

poſſeſſion called *writs of entry*, or the property called *writs of right*. Cowell, edit. 1727.

If the plea be not holden upon the original, this act extendeth not to it; as in a *recordare* to remove a plaint of replevin into the *Common Pleas*, becauſe the plea is holden upon the plaint, this act extends not to it. So in a return of reſcous, though there lieth proceſs of outlawry, yet this ſtatute extends not to it, becauſe this act ſpeaketh only of writs original. 2 *Inſt.* 665. Nor doth this act extend to an indictment for incroaching on a highway; for proceſs of outlawry lieth not in that caſe, but diſtreſs; and ſo it was ruled in the lord *Paget*'s caſe. *Cro. Eliz.* 148.

Actions perſonal] A perſonal action is that which one man may have againſt another, by reaſon of any contract for money or goods, or for any offence done by him, or ſome other, for whoſe fact he is anſwerable. A *real* action is defined to be that, whereby a defendant claims title to have a freehold in any lands or tenements, rents or commons in fee-ſimple, fee-tail, or for life. *Cowell, edit.* 1727.

In which the exigent ſhall be awarded] Exigent, *exigenda*, is a writ that lieth where the defendant in an action perſonal cannot be found, nor any thing within the county whereby he may be attached or diſtrained; and is directed to the ſheriff, to proclaim and call him five county-days one after another, charging him to appear under the pain of outlawry. This writ lieth alſo in an indictment of felony, where the party indicted cannot be found. It ſeemeth to be called *exigent*, becauſe it *exacteth* the party, that is, requireth his appearance to anſwer the law; for if he come not at the laſt day's proclamation, he is ſaid to be *quinquies exactus*, *five times required*, and then is outlawed. *Cowell, edit.* 1727.

To the names of the defendants] Regularly by the common law, every natural man, having no name of dignity, ought to be named in all originals, and other ſuits, by his chriſtian name and ſurname; and *that*, before this act, ſufficed; but if he had a name of inferior dignity, as knight or baronet, he ought to be named by his chriſtian name and ſurname, and by the addition of his name of dignity by the common law; which is implied in the words, *to the names of the defendants*. 2 *Inſt.* 665, 666.

If there be a corporation of one ſole perſon that hath a fee-ſimple, and may have a writ of right, he may be named in originals, *&c.* by the common law, by his chriſtian name, without any ſurname; for the name of his corporation is in lieu of his ſurname, (ſome ſay both of chriſtian name and ſurname); as *John* abbot of *D.* &c. *John* biſhop of *N.* but otherwiſe it is of a parſon; for he muſt be named by his chriſtian name and ſurname. 2 *Inſt.* 666.

If it be a corporation aggregate of many able perſons, as mayor and commonalty, dean and chapter, maſter of an hoſpital, and brethren, *&c.* the mayor, dean, or maſter, need not be named by his chriſtian name; becauſe ſuch a corporation ſtandeth in lieu both of the chriſtian name and ſurname. 2 *Inſt.* 666.

If a man be created by letters patent, duke, marquis, earl, viſcount, or baron, the dignity is ſo incorporated to him, according to the ſtate given unto him by thoſe letters patent, that the duke, *&c.* by the common law might be named by his chriſtian name, and by the name of his dignity, which ſtandeth in lieu of his ſurname. And the reaſon thereof is, for that the king by thoſe letters patent creates him to the ſtate, honour, and degree of duke: and though a creation by writ hath not the ſame words, yet it hath the ſame effect. 2 *Inſt.* 666.

This law doth not extend to the names of plaintiffs, for they were in no miſchief or danger to be miſtaken, nor does it extend to real or mixed actions; becauſe, here the poſſeſſors were impleaded who were ſufficiently ſpecified, and ſo no other mark of diſtinction is needful; beſides, no man can in the proceſs poſſibly be grieved, becauſe there is no proceſs but of diſtreſs upon the land, and no impriſonment at all in theſe actions. 2 *Inſt.* 665. 6 *Mod.* 85.

Additions ſhall be made of their eſtate or degree] As to the eſtate and degree required by the ſtatute to be added, it muſt be obſerved, that eſtate or ſtate is defined by the civilians the capacity of moral perſons; for, as natural perſons have a certain ſpace in which their natural exiſtence is placed, and in which they perform their natural actions; ſo have perſons in a community, a certain ſtate or capacity, in which they are ſuppoſed to exiſt, to perform their moral acts, and exerciſe all civil relations; and therefore, where one, who is neither by birth, office, creation, or reputation, an eſquire or gentleman, is named with either of theſe additions; or where a gentleman, by birth, who follows huſbandry or a trade, is named with the addition of the trade or huſbandry, and not of gentleman; or where a peer, who has more than one name of dignity, is not named by the moſt noble; or where a gentleman or gentlewoman is named ſpinſter, or a yeoman is named gentleman; and ſuch matter is pleaded in abatement, and found for the perſon who pleads it, the writ ſhall abate. 2 *Inſt.* 669. 2 *Hawk. P. C.* 185.

The degree of a ſerjeant at law is certainly a good addition; and ſo, as is generally holden, is a degree in either univerſity; yet a doctor in divinity may be deſcribed by the addition of clerk, as well as by that of doctor. Eſquire, gentleman, yeoman, labourer, are good additions of the eſtate and degree of a man, but not for that of a woman. Gentlewoman, widow, ſingle woman, wife of *J. S.* ſpinſter, are good additions of the eſtate and degree of a woman; and, as ſome ſay, ſpinſter is a good addition for the eſtate and degree of a man; but neither burgeſs, citizen nor ſervant, are good additions, as being too general. 2 *Inſt.* 667. 2 *Hawk. P. C.* 187, 188.

If ſeveral defendants, of different names, have the ſame addition, it is ſafeſt to repeat the addition after each name; and if a father have the ſame name and addition with his ſon, the writ againſt the ſon is abateable, unleſs the addition of *the younger* be added to the other additions: but if a father be a defendant, there is no need of the addition of *the elder.* 2 Hawk. P. C. 187.

Or miſtery] It ſeems agreed, that the word *miſtery* includes all lawful arts, trades and occupations; and that if one, under the degree of a gentleman have divers of ſuch arts, trades or occupations, he may be named by any of them. 2 *Inſt.* 668.

The additions of this kind, which are ſaid to be clearly good, are thoſe of huſbandman, merchant, broker, taylor, point-maker, ſmith, miller, carpenter, cook, brewer, baker, butcher, pariſh-clerk, mercer, fiſhmonger, dyer, ſchoolmaſter, ſcrivener, and ſuch like. 2 *Hawk. P. C.* 188. 2 *H. H. P. C.* 176.

The additions of this kind, which are ſaid to be clearly inſufficient, are thoſe of maintainer, extortioner, thief, vagabond, heretick, common informer, and ſuch like. 2 *Hawk. P. C.* 188.

But the following additions of this kind are ſaid to be queſtionable: 1ſt, Farmer; which, by the better opinion, ſeems to be an inſufficient addition; becauſe, if any miſtery be implied in the notion of it, it is that of huſbandry, of which huſbandman is the proper addition. 2dly, Chamberlain, butler and pantler; which are holden to be inſufficient additions; becauſe they denote only a ſpecial kind of officer or ſervant; and imply nothing which, in the common underſtanding of the words, comes under the notion of a miſtery; and from this ground it ſeems to follow, that neither groom nor page are good additions; and yet in ſome of the old books they ſeem to have been ſo admitted. 3dly, Hoſtler; which hath been holden to be a good addition, and ſeems properly enough to come under the notion of a miſtery; and tho' it hath been reſolved, that any one who keeps an inn, may be ſued by the addition of a labourer, upon the cuſtom of the realm, for want of due care of the goods of his gueſts; becauſe, whoever keeps a common inn, is in that reſpect liable to anſwer for ſuch defects, by whatſoever addition he may be ſtiled; yet this does by no means prove that ſuch perſon may not as well be ſued by the addition of hoſtler, but only that he may be ſued as well under any other addition. 2 *Hawk. P. C.* 188, 189.

And of the towns or hamlets] It is a good addition of this kind, to name the party late of ſuch a town; in which reſpect this addition differs from that of the eſtate, degree or miſtery; and it is ſaid, that if a defendant be named of *A.* and late of *B.* it is ſufficient to prove either addition. 2 *Hawk. P. C.* 189. 2 *Hal. H. P. C.* 175.

If there be two towns in a county, the one called *Great Dale*, the other *Little Dale*, and the defendant be named only of *Dale*; he may plead, that there are two *Dales* in the county, called *Great Dale* and *Little Dale*, and none without an addition; and as ſome ſay, he may plead that there is no ſuch town as *Dale*, either in this caſe, or where there is but one town called *Little Dale*, and he is named of *Dale*. 2 Hawk. P. C. 189.

If a defendant live in a hamlet, which is ſo far part of a town, that thoſe who live in it are indifferently ſtiled ſometimes of the hamlet, and ſometimes of the town; it ſeems to be in the election of the plaintiff to name him either of the hamlet or of the town. 2 *Hawk. P. C.* 189.

The

The addition of a pariſh, if there be two or more towns within it, is not good, but if there be but one town in the pariſh, the addition of pariſh is good; and it ſhall not be intended (if it be not pleaded) that there are more towns than one in the pariſh. 2 *Inſt.* 669.

The habitation of the wife is ſufficiently ſhewn by ſhewing that of the huſband. 2 *Hawk. P. C.* 189.

Or places] Theſe are underſtood of places known *out* of any town or hamlet. 2 *Inſt.* 669. If a defendant live in a place known by a ſpecial name, out of a town or hamlet, he may be named of ſuch place; but if he live in any place known within a town or hamlet, it is ſaid to be ſafeſt to name him of the town or hamlet. 2 *Hawk.* 189, 190.

The addition of the eſtate, degree, or miſtery, ought to be ſuch as the defendant was of at the day of the indictment brought, or writ purchaſed, and not *late* of ſuch a degree or miſtery; but it is a good addition to name the defendant *late* of ſuch a town or place, becauſe men do often remove their habitation. And this diſtinction appeareth by the act itſelf, by reaſon of the word in the act, relating to the towns, hamlets, *&c. of the which they were or be.* 2 Inſt. 670.

That they be void, fruſtrate and holden for none] This being a judgment in law, is interpreted to be made void by a writ of error, or by the plea of the party coming in upon a *capias utlagatum*; for though the words of the ſtatute be *void*, &c. yet it is but voidable by writ of error, or plea. 2 *Inſt.* 670.

By the exception of the party] But if the defendant, though he hath no ſuch addition as this act requireth, appear upon proceſs, and plead, taking no advantage thereof by exception, he hath loſt the benefit of this act. 2 *Inſt.* 670.

Affray.

What is an affray.

AFFRAY, is derived from the *French* word *effrayer*, to *affright*, and it formerly meant no more; as where perſons appeared with armour or weapons not uſually worn, to the terror of others; and ſo is the word uſed in the ſtatute of *Northampton*, 2 Ed. 3. c. 3. It is now commonly taken for a ſkirmiſh, or fighting between two or more: in our books it is many times confounded with *aſſault*, as appears by *Lambard*, in his *Eirenarcha*, lib. 2. c. 3. & lib. 1. c. 17. Yet, as it is there ſaid, they differ in this, that where an aſſault is but a wrong to the party, an affray is a wrong to the commonwealth, and therefore both inquirable and puniſhable in a leet. It may be ſaid likewiſe, that an aſſault is but of one ſide, but an affray is the fighting of many together: beſides this ſignification, it may be taken for a terror wrought in the ſubject by an unlawful ſight of violence, *&c.* as, if a man ſhew himſelf furniſhed with armour or weapons not

not uſually worn, it may ſtrike a fear into others unarmed; and ſo it is uſed in *Stat.* 2 *Ed.* 3. *c.* 3. 4 *Hen.* 6. *c.* 3. 8 *Ed.* 4. *c.* 5. *Cowell, edit.* 1727.

Lord *Coke* defines this word thus: "An affray is a publick offence to the terror of the king's ſubjects, and ſo called, becauſe it affrighteth and maketh men afraid." 3 *Inſt.* 158.

From this laſt definition it ſeemeth clearly to follow, that there may be an *aſſault*, which will not amount to an *affray*; as where it happens in a private place, out of the hearing or ſeeing of any, except the parties concerned, in which caſe it cannot be ſaid to be to the terror of the people. 1 *Hawk. P. C.* 134.

Alſo, it is ſaid, that no quarrelſome or threatening words whatſoever ſhall amount to an affray; and that no one can juſtify laying his hands on thoſe who barely quarrel with angry words, without coming to blows; yet it ſeemeth that the conſtable may, at the requeſt of the party threatened, carry the perſon who threatens to beat him before a juſtice, in order to find ſureties. 1 *Hawk. P. C.* 135.

Alſo, it is certain, that it is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the meſſenger of ſuch a challenge; or even barely to endeavour to provoke another to ſend a challenge, or to fight; as by diſperſing letters to that purpoſe, full of reflections, and inſinuating a deſire to fight. 1 *Hawk. P. C.* 135.

But altho', ſays Mr. ſerjeant *Hawkins*, no bare words, in the judgment of law, carry in them ſo much terror as to amount to an affray, yet it ſeems certain, that in ſome caſes there may be an affray, where there is no actual violence; as where a man arms himſelf with dangerous and unuſual weapons, in ſuch a manner as will naturally cauſe a terror to the people; which is ſaid to have been always an offence at the common law, and is ſtrictly prohibited by the following ſtatute. 1 *Hawk. P. C.* 135.

Stat. 2 *Ed.* 3. *c.* 3. [*A. D.* 1328. commonly called the ſtatute of *Northampton*, and intituled,] "No man ſhall come before the juſtices, or go or ride armed." Stat. 2 Ed. 3. c. 3. enforced by 7 Ric. 2. c. 13. 20 Ric. 2. c. 1.

"Item, it is enacted, that no man great nor ſmall, of what condition ſoever he be, except the king's ſervants in his preſence, and his miniſters in executing the king's precepts, or of their office, and ſuch as be in their company aſſiſting them, and alſo upon a cry made for arms to keep the peace, and the ſame in ſuch places where ſuch acts happen, be ſo hardy to come before the king's juſtices, or other of the king's miniſters doing their office, with force and arms, nor bring force in affray of the peace, nor to go nor ride armed by night nor by day, in fairs, markets, nor in the preſence of the juſtices or other miniſters, nor in any part elſewhere, upon pain to forfeit their armour to the king, and their bodies to priſon at the king's pleaſure. And that the king's juſtices in their preſence, ſheriffs, and other miniſters in their bailiwicks, lords of franchiſes, and their bailiffs in the ſame, and mayors and bailiffs of cities and boroughs, within the ſame cities and boroughs, and borough-holders, conſtables, and wardens of the peace within their wards, ſhall have power to

execute this act. And that the juſtices aſſigned, at their coming down into the country, ſhall have power to enquire how ſuch officers and lords have exerciſed their offices in this caſe, and to puniſh them whom they find, who have not done that which pertained to their office."

In the expoſition of this act, the following points have been holden: 1ſt, That any juſtice of peace, or other perſon, who is impowered to execute this ſtatute, may proceed thereon, either *ex officio*, or by force of a writ out of *Chancery* formed upon the ſtatute; and that if he find any perſon in arms contrary to the form of the ſtatute, he may ſeize the arms, and commit the offender to priſon; and that he ought alſo to make a record of his whole proceeding, and certify the ſame into the *Chancery*, where he proceeds by force of the ſaid writ, or into the *Exchequer*, where he proceeds *ex officio*. 2dly, That where a juſtice of peace, *&c.* proceeds upon the ſaid writ, he may not only impriſon thoſe whom he ſhall find offending againſt the ſtatute in his own view, but alſo thoſe who ſhall be found by an inqueſt taken before him, to have offended in ſuch manner in his abſence; and I do not ſee, ſays Mr. ſerjeant *Hawkins*, why he may not do the ſame where he proceeds *ex officio*; for ſeeing the ſaid writ hath no other foundation but the ſaid ſtatute, and is the moſt authentick explication thereof, it ſeemeth, that the rules therein preſcribed, ſhould be the beſt direction for all proceedings upon that ſtatute. 3dly, That the under-ſheriff may execute the ſaid writ, being directed to the ſheriff, if it name him only by the name of his office, and not by his proper name, and do not expreſly command him to act in his proper perſon. 4thly, That a man cannot excuſe the wearing ſuch armour in public, by alleging that ſuch a one threatened him, and that he wears it for the ſafety of his perſon from his aſſault; but it hath been reſolved, that no one ſhall incur the penalty of the ſaid ſtatute for aſſembling his neighbours and friends in his houſe, againſt thoſe who threaten to do him any violence therein, becauſe a man's houſe is as his caſtle. 5thly, That no wearing of arms is within the meaning of this ſtatute, unleſs it be accompanied with ſuch circumſtances as are apt to terrify the people; from whence it ſeems clearly to follow, that perſons of quality are in no danger of offending againſt this ſtatute by wearing common weapons, or having their uſual number of attendants with them, for their ornament or defence, in ſuch places, and upon ſuch occaſions, in which it is the common faſhion to make uſe of them, without cauſing the leaſt ſuſpicion of an intention to commit any act of violence or diſturbance of the peace. And from the ſame ground it alſo follows, that perſons armed with privy coats of mail, to the intent to defend themſelves againſt their adverſaries, are not within the meaning of this ſtatute, becauſe they do nothing *in terrorem populi*. 6thly, That no perſon is within the intention of the ſaid ſtatute, who arms himſelf to ſuppreſs rioters, rebels, or enemies, and endeavours to ſuppreſs or reſiſt ſuch diſturbers of the peace or quiet of the realm; for perſons who ſo arm themſelves, ſeem to be exempted out of the general words of the ſaid ſtatute, by that part of the exception in the beginning thereof, which ſeems to allow all perſons to arm themſelves upon a cry made for arms to

keep

keep the peace, in ſuch places, where ſuch acts happen. 1 *Hawk. P. C.* 135, 136.

In affray of the peace] The words of the original *French* in the ſtatutes at large are, *en affrai de la pees*; lord *Coke* has it *pais*, *of the country*, or *the people*, and ſays, that the words of the writ grounded upon this ſtatute are, *in quorundam de populo terrorem*, as appears in *F. N. B. fo.* 249. and the Regiſter agrees with the original. 3 *Inſt.* 158.

Under this head, Mr. ſerjeant *Hawkins* conſiders, how far an affray may be ſuppreſſed by a private perſon; how far an affray may be ſuppreſſed by a conſtable; in what manner an affray may be ſuppreſſed by a juſtice of peace; and, in what manner the ſeveral kinds of affrays may be puniſhed.

How far an affray may be ſuppreſſed by a private perſon.

It ſeems agreed, ſays Mr. ſerjeant *Hawkins*, that any one who ſees others fighting, may lawfully part them, and alſo ſtay them till the heat be over, and then deliver them to the conſtable, who may impriſon them till they find ſurety for the peace; alſo, it is ſaid, that any private perſon may ſtop thoſe whom he ſhall ſee coming to join either party; and from hence, it ſeems clearly to follow, that if a man receive a hurt from either party in thus endeavouring to preſerve the peace, he ſhall have his remedy by an action againſt him; alſo, upon the ſame ground it ſeems equally reaſonable, that if he unavoidably happen to hurt either party, in thus doing what the law both allows and commands, he may well juſtify it, inaſmuch as he is no way in fault; and the damage done to the other, was occaſioned by a laudable intention to do him a kindneſs. 1 *Hawk. P. C.* 136.

However, it ſeems clear, that if either party be dangerouſly wounded in ſuch affray, and a ſtander-by, endeavouring to arreſt the other, be not able to take him without hurting, or even wounding him, yet he is no way liable to be puniſhed for the ſame inaſmuch as he is bound under pain of fine and impriſonment, to arreſt ſuch an offender, and either detain him till it appear whether the party will live or die, or carry him before a juſtice of peace, by whom he is either to be bailed or committed, *&c.* 1 *Hawk. P. C.* 136.

How far an affray may be ſuppreſſed by a conſtable.

As to this point, it ſeems agreed, ſays Mr. ſerjeant *Hawkins*, that a conſtable is not only impowered, as all private perſons are, to part an affray which happens in his preſence, but is alſo bound at his peril to uſe his beſt endeavours to this purpoſe, not only to do his utmoſt himſelf, but alſo to demand the aſſiſtance of others, which if they refuſe to give him, they are puniſhable with fine and impriſonment. 1 *Hawk. P. C.* 137.

And it is ſaid, that if a conſtable ſee perſons either actually engaged in an affray, as by ſtriking, or offering to ſtrike, or drawing their weapons, *&c.* or upon the very point of entering upon an affray, as where one ſhall threaten to kill, wound, or beat another, he may either carry the offender before a juſtice of peace, to the end that ſuch juſtice may compel him to find ſureties for the peace, *&c.* or he may impriſon him of his own authority for a reaſonable time, till the heat ſhall be over, and alſo afterwards detain him till he find ſuch ſurety by obligation: but it ſeems, that he has no power to impriſon ſuch an offender in any other manner, or for any

other purpoſe; for he cannot juſtify the committing an affrayer to gaol till he ſhall be puniſhed for his offence: and it is ſaid, that he ought not to lay hands on thoſe, who barely contend with hot words, without any threats of perſonal hurt, and that all which he can do in ſuch caſe, is to command them under pain of impriſonment to avoid fighting. 1 *Hawk. P. C.* 137.

But he is ſo far intruſted with a power over all actual affrays, that though he himſelf is a ſufferer by them, and therefore liable to be objected againſt, as likely to be partial in his own cauſe, yet he may ſuppreſs them; and therefore, if an aſſault be made upon him, he may not only defend himſelf, but alſo impriſon the offender, in the ſame manner as if he were no way a party. 1 *Hawk. P. C.* 137.

And if an affray lie in a houſe, the conſtable may break open the door to preſerve the peace; and if the affrayers fly to a houſe, and he follow with freſh ſuit, he may break open the doors to take them. 1 *Hawk. P. C.* 137.

But it is ſaid, that a conſtable hath no power to arreſt a man for an affray done out of his own view, without a warrant from a juſtice of peace, unleſs a felony were done or likely to be done; for it is the proper buſineſs of a conſtable to preſerve the peace, not to puniſh the breach of it; nor does it follow from his having power to compel thoſe to find ſureties who break the peace in his preſence, that he has the ſame power over thoſe who break it in his abſence, inaſmuch as in ſuch caſe, it is moſt proper to be done by thoſe who may examine the whole circumſtances of the matter upon oath, which a conſtable cannot do; yet it is ſaid, that he may carry thoſe before a juſtice of peace, who were arreſted by ſuch as were preſent at an affray, and delivered by them into his hands. 1 *Hawk. P. C.* 137.

In what manner an affray may be ſuppreſſed by a juſtice of peace.

As to this point, Mr. ſerjeant *Hawkins* ſays, there is no doubt, but that a juſtice of peace may and muſt do all ſuch things to that purpoſe, which a private man or conſtable, are either enabled, or required by the law to do; but it is ſaid, that he cannot without a warrant authorize the arreſt of any perſon for an affray out of his view; yet it ſeems clear, that in ſuch caſe he may make his warrant to bring the offender before him, in order to compel him to find ſureties for the peace. 1 *Hawk. P. C.* 137.

Alſo, it ſeems, that a juſtice of peace has a greater power over one who hath dangerouſly wounded another in an affray, than either a private perſon or a conſtable; for there does not ſeem to be any good authority, that theſe have any power at all to take ſureties of ſuch an offender; but it ſeems certain, that a juſtice of peace has a diſcretionary power either to commit him or bail him, till the year and day be paſt; but it is ſaid, that he ought to be very cautious how he takes bail, if the wound be dangerous; for that if the party die, and the offender appear not, he is in danger of being ſeverely fined, if he ſhall appear upon the whole circumſtances of the caſe to have been too favourable. 1 *Hawk. P. C.* 138.

In what manner the ſeveral kinds of affrays may be puniſhed.

As to this point, it ſufficiently appears, ſays Mr. ſerjeant *Hawkins*, from what hath been ſaid, how ſuch affrays as are accompanied with force and arms, are to be dealt with upon the ſtatute of *Northampton*; [that is, the

ſaid

ſaid ſtatute 2 *Ed.* 3. *c.* 3. to which the ſtat. 20 *Ric.* 2. *c.* 1. adds a fine,] and therefore, ſays he, I ſhall only examine in this place, what penalties other affrays are liable unto; as to which, it may be obſerved, that all affrays in general are puniſhable by fine and impriſonment, the meaſure of which is to be regulated by the diſcretion of the judges, according to the circumſtances of the caſe, which very much vary the nature of this crime, and in ſome caſes make it ſo inconſiderable as ſcarce to be taken notice of; and in others, make it an offence of a very heinous nature, as in the following inſtances: Firſt, An affray may receive an aggravation from the dangerous tendency thereof, as where perſons coolly and deliberately engage in a duel, which cannot but be attended with the apparent danger of murder, and is not only an open defiance of the law, but carries with it a a direct contempt of the juſtice of the nation, as putting men under a neceſſity of righting themſelves; upon which conſiderations, perſons convicted of barely ſending a challenge, have been adjudged to pay a fine of one hundred pounds, and to be impriſoned for one month without bail, and alſo to make a publick acknowledgment of their offence, and to be bound to their good behaviour. Secondly, An affray may receive another aggravation from the perſons againſt whom it is committed; as where the officers of juſtice are violently diſturbed in the due execution of their office, as by the reſcue of a perſon legally arreſted, or the bare attempt to make ſuch a reſcue; for all the miniſters of the law are under its more immediate protection. Thirdly, An affray may receive a farther aggravation from the place wherein it is committed, and upon this reſpect all affrays in the king's courts are ſeverely puniſhed, and upon the ſame account alſo, all affrays in a church or church-yard, have been always eſteemed very heinous offences, as being great indignities to the Divine Majeſty, to whoſe worſhip and ſervice ſuch places are immediately dedicated. And upon this conſideration, all irreverent behaviour in theſe places hath been eſteemed ſo criminal by the makers of our laws, that they have not only ſeverely puniſhed ſuch diſturbances in them which are puniſhable wherever they happen, as all actual affrays, *&c.* but alſo ſuch, which if they happen elſewhere, are not puniſhable at all; as bare quarrelſome words, and even ſuch, which would be commendable if done in another place; as arreſts by virtue of legal proceſs. 1 *Hawk*, *P. C.* 138, 139. See **Church and Church-yard, Publick Worſhip, Diſſenters.**

Alehouſes.

1 Salk. 45. BEFORE the ſtatute of 5 & 6 *Ed.* 6. *c.* 25. it was lawful for any one to keep an alehouſe without licence; for it was a means of livelihood, which any one was free to follow; but if it was diſorderly kept, it was indictable as a nuſance.

19 Hen. 7. c. 12. **Stat.** 19 *Hen.* 7. *c.* 12. [*A. D.* 1503.] *By this act two juſtices were impowered to ſuppreſs the common ſelling of ale and beer; but it is not printed in any edition of the ſtatutes at large, except* Raſtell's, *becauſe it was altered by* 5 & 6 Ed. 6. c. 25. *and repealed by* 21 Jac. 1. c. 28.

5 & 6 Ed. 6. c. 25. **Stat.** 5 & 6 *Ed.* 6. *c.* 25. [*A. D.* 1552. *intituled,*] "For keepers of alehouſes and tipling-houſes, to be bound by recogniſance."

Enforced by 1 Ja. 1. c. 9. None ſhall ſell ale or beer without licence, and they ſhall be bound by recogniſance. 1 Show. 398.

"*Foraſmuch as intolerable hurts and troubles to the commonwealth of this realm doth daily grow and increaſe through ſuch abuſes and diſorders as are had and uſed in common alehouſes, and other houſes called tiplinghouſes:* (2) It is therefore enacted by the king our ſovereign lord, with the aſſent of the lords and commons in this preſent parliament aſſembled, and by the authority of the ſame, that the juſtices of peace within every ſhire, city, borough, town corporate, franchiſe or liberty within this realm, or two of them at the leaſt, (whereof one of them to be of the *quorum*) ſhall have full power and authority by virtue of this act, within every ſhire, city, borough, or town corporate, franchiſe and liberty, where they be juſtices of peace, to remove, diſcharge and put away common ſelling of ale and beer in the ſaid common alehouſes and tiplinghouſes, in ſuch town or towns, and places where they ſhall think meet and convenient: (3) And that none after the firſt day of *May* next coming ſhall be admitted or ſuffered to keep any common alehouſe or tiplinghouſe, but ſuch as ſhall be thereunto admitted and allowed in the open ſeſſions of the peace, or elſe by two juſtices of the peace, whereof the one to be of the *quorum*; (4) And that the ſaid juſtices of the peace, or two of them, (whereof one to be of the *quorum*) ſhall take bond and ſurety from time to time by recogniſance of ſuch as ſhall be admitted and allowed hereafter to keep any common alehouſe or tiplinghouſe, as well for and againſt the uſing of unlawful games, as alſo for the uſing and maintenance of good order and rule to be had and uſed within the ſame, as by their diſcretion ſhall be thought neceſſary and convenient; (5) for making of every which recogniſance, the party or parties that ſhall be *ſo* bound ſhall pay but twelve pence.

Juſtices of peace may diſcharge common ſelling of ale and beer. 1 Bulſt. 109. 4 Mod. 144.

Recogniſance with ſurety by thoſe which do keep alehouſes.

12 d. for making the recogniſance.

II. "And the ſaid juſtices ſhall certify the ſame recogniſance at the next quarter-ſeſſions of the peace to be holden within the ſame ſhire, city, borough, town corporate, franchiſe or liberty where ſuch alehouſe or tiplinghouſe ſhall be; (2) the ſame recogniſance there to remain of record before the juſtices of peace of that ſhire, city, borough, town corporate, franchiſe or

Recogniſance muſt be certified at the next quarter ſeſſions.

or liberty; (3) upon pain of forfeiture to the king for every ſuch recogniſance taken and not certified, 3*l.* 6*s.* 8*d.*

III. "And it is further enacted by the authority aforeſaid, that the juſtices of peace of every ſhire, city, borough, town corporate, franchiſe and liberty where ſuch recogniſance ſhall be taken, ſhall have power and authority by this act, in their quarter-ſeſſions of the peace, by preſentment, information, or otherwiſe by their diſcretion, to enquire of all ſuch perſons as ſhall be admitted and allowed to keep any alehouſe or tiplinghouſe, and that be bound by recogniſance as is aboveſaid, if they or any of them have done any act or acts whereby they or any of them have forfeited the ſame recogniſance: (2) And the ſaid juſtices of every ſhire, and places where they be juſtices, ſhall upon every ſuch preſentment or information award proceſs againſt every ſuch perſon ſo preſented or complained upon before them, to ſhew why he ſhould not forfeit his recogniſance; (3) and ſhall have power and authority by this act to hear and determine the ſame by all ſuch ways and means as by their diſcretion ſhall be thought good.

Inquiry of thoſe which have forfeited their recogniſance.

IV. "And it is further enacted by the authority aforeſaid, that if any perſon or perſons, other than ſuch as ſhall be hereafter admitted or allowed by the ſaid juſtices, ſhall after the ſaid firſt day of *May*, obſtinately and upon his own authority, take upon him or them to keep a common alehouſe or tiplinghouſe, or ſhall contrary to the commandment of the ſaid juſtices, or two of them, uſe commonly ſelling of ale and beer: that then the ſaid juſtices of peace, or two of them, (whereof one to be of the *quorum*) ſhall for every ſuch offence commit every ſuch perſon or perſons ſo offending to the common gaol within the ſaid ſhire, city, borough, town corporate, franchiſe or liberty, there to remain without bail or mainpriſe by the ſpace of three days; (2) and before his or their deliverance, the ſaid juſtice ſhall take recogniſance of him or them ſo committed, with two ſureties, that he or they ſhall not keep any common alehouſe, tiplinghouſe, or uſe commonly ſelling of ale or beer, as by the diſcretion of the ſaid juſtices ſhall ſeem convenient.

The puniſhment of thoſe which contrary to the commandment of the juſtices, do keep alehouſes. Altered by 3 Car. 1. c. 3. ſ. 2. 5 Geo. 3. c. 46. Palmer 388. 1 Salk. 45.

V. "And the ſaid juſtices ſhall make certificate of every ſuch recogniſance and offence at the next quarter-ſeſſions that ſhall be holden within the ſame ſhire, city, borough, town corporate, franchiſe or liberty where the ſame ſhall be committed or done; (2) which certificate ſhall be a ſufficien conviction in the law of the ſame offence. (3) And the ſaid juſtices of peace, upon the ſaid certificate made, ſhall in open ſeſſions aſſeſs the fine for every ſuch offence at 20*s.*

Certificate of the recogniſance and offence at the quarter ſeſſions

The fine of thoſe which keep alehouſes without licence.

"VI. Provided alway, that in ſuch towns and places where any fair or fairs ſhall be kept, that for the time only of the ſame fair or fairs it ſhall be lawful for every perſon and perſons to uſe common ſelling of ale or beer in booths, or other places there, for the relief of the king's ſubjects that ſhall repair to the ſame, in ſuch *like* manner, and ſort as hath been uſed in time paſſed; this act, or any thing therein contained, to the contrary notwithſtanding." 4 *Ja.* 1. *c.* 4.

A proviſo for towns where fairs be kept.

1 Jac. 1. c. 9. **Stat. 1 *Jac.* 1. *c.* 9.** [*A. D.* 1603. *intituled*,] "An act to reſtrain the inordinate haunting and tipling in inns, alehouſes, and other victualling-houſes."

The true and principal uſe of inns and alehouſes.

"Whereas the ancient, true and principal uſe of inns, alehouſes, and victualling-houſes, was for the receit, relief and lodging of wayfaring people travelling from place to place, and for ſuch ſupply of the wants of ſuch people as are not able by greater quantities to make their proviſion of victuals, and not meant for entertainment and harbouring of lewd and idle people to ſpend and conſume their money and their time in lewd and drunken manner:

The forfeiture of an alehouſe-keeper permitting one to continue unlawful drinking in his houſe. 7 Jac. 1. c. 10. 1 Car. 1. c. 4. Farther proviſions relating hereto. 1 Ca. 1. c. 4.

II. "Be it therefore enacted by the king's moſt excellent majeſty, the lords ſpiritual and temporal, and commons in this preſent parliament aſſembled, and by the authority of the ſame, that if after forty days next enſuing after the end of this preſent ſeſſion of parliament, any inn-keeper, victualler or alehouſe-keeper within this realm of *England*, or the dominion of *Wales*, do permit or ſuffer any perſon or perſons inhabiting and dwelling in any city, town corporate, market-town, village or hamlet within this realm of *England*, or dominion of *Wales*, where any ſuch inn, alehouſe or tipling-houſe is or ſhall be, to remain or continue drinking or tipling in the ſaid inn, victualling-houſe, tipling-houſe or alehouſe; (2) other than ſuch as ſhall be invited by any traveller, and ſhall accompany him only during his neceſſary abode there; (3) and other than labouring and handicraftſmen in cities and towns corporate, and market-towns, upon the uſual working-days, for one hour at dinner-time, to take their diet in an alehouſe; (4) and other than labourers and workmen, which for the following of their work by the day, or by the great, in any city, town corporate, market-town or village, ſhall for the time of their ſaid continuing in work there, ſojourn, lodge or victual in any inn, alehouſe or other victualling-houſe; (5) other than for urgent and neceſſary occaſions to be allowed by two juſtices of peace; that then every ſuch inn-keeper, victualler or alehouſe-keeper, ſhall for every ſuch offence, forfeit and loſe the ſum of ten ſhillings of current money of *England*, to the uſe of the poor of the pariſh where ſuch offence ſhall be committed; (6) the ſame offence being viewed and ſeen by any mayor, bailiff or juſtice of peace within their ſeveral limits, or proved by the oath of two witneſſes, to be taken before any mayor, bailiff, or any other head officer, or any one or more juſtice or juſtices of the peace, who by virtue of this act, ſhall be authorized to miniſter the ſaid oath to any perſon or perſons that can or will juſtify the ſame, being within the limits of their ſaid commiſſion.

One witneſs ſufficient. 21 Jac. 1. c. 7. ſ. 1.

The prices of ale and beer ſold in an inn or alehouſe.

III. "And be it further enacted by the authority aforeſaid, that if any inn-keeper, alehouſe-keeper or victualler, ſhall at any time utter or ſell leſs than one full ale-quart of the beſt beer or ale for a penny, and of the ſmall, two quarts for one penny, that then every ſuch inn-keeper, alehouſe-keeper or victualler, ſhall forfeit for every ſuch offence being duly

proved in manner above limited, the ſum of twenty ſhillings of lawful money of *England*, to the uſe aboveſaid; (2) All and every the ſaid penalties to be levied by the conſtables or church-wardens of the pariſh or pariſhes where the offence or offences ſhall be committed, by way of diſtreſs to be taken and detained for the ſaid forfeitures, and for default of ſatisfaction within ſix days next enſuing, the ſame then to be preſently appriſed and ſold, and the ſurpluſage or remainder over and above, to be delivered to the party of whom the diſtreſs was taken; (3) and for want of ſufficient diſtreſs, the party or parties offending to be by the mayor, bailiff, or other head officer, or juſtice or juſtices aforeſaid, committed to the common gaol, there to remain until the ſaid penalty or penalties be truly paid.

IV. " And be it further enacted by the authority aforeſaid, that if the conſtables or church-wardens do neglect their duty in levying, or do not levy the ſaid ſeveral penalties, or in default of diſtreſs or diſtreſſes, from time to time do neglect to certify the ſame default of diſtreſs, by the ſpace of twenty days then next enſuing, to the mayor, bailiff, or other head officer, or juſtice of peace within whoſe juriſdiction the offence is committed, then every perſon and perſons ſo offending ſhall forfeit for every ſuch default, the ſum of forty ſhillings of current money of *England*, to the uſe of the poor of the pariſh where ſuch offence ſhall be committed; (2) to be levied by way of diſtreſs of the offenders goods, by warrant from any one or more juſtice or juſtices of the peace, mayor, bailiff, or other head officer within the limits of their juriſdictions reſpectively, under his or their hand and ſeal, to be taken and detained for the ſaid forfeitures, for the ſpace of ſix days then next enſuing: Within which time if payment be not made, the ſame goods to be preſently appriſed and ſold, and the ſurpluſage and remainder over and above (if any be) to be delivered to the party of whom the diſtreſs was taken; (3) and for want of ſuch ſufficient diſtreſs, the conſtable, church-warden or church-wardens ſo offending, to be by the mayor, bailiff, or other head officer, juſtice or juſtices of peace, committed to the common gaol, there to remain until the ſaid penalty or penalties be truly paid; (4) for all which penalties which ſo ſhall be levied by the ſaid conſtables or church-wardens, they the ſaid conſtables and church-wardens ſhall be accountable to their ſucceſſors and other the pariſhioners, in ſuch ſort as they uſually be in other church-reckonings or accounts: (5) And for all forfeitures to be levied by reaſon of any neglect of the conſtables or church-wardens, thoſe ſhall be accountable, who by force of any warrant or precept do levy the ſame, or upon the enlargement of the perſons committed, do receive the ſame.

The penalty of the conſtables or church-wardens omitting their duty.

The conſtable and church-warden's account.

V. " And be it further enacted, that all other laws and ſtatutes touching inn-keepers, victuallers, and alehouſe-keepers ſhall ſtill remain in their former force, and be put in due execution. (2) This act to continue to the end of the firſt ſeſſion of the next parliament.

19 H. 7. c. 12. 5 & 6 Ed. 6. c. 25. Made perpetual by 21 Jac. 1. c. 7.

VI. " Provided always, and be it enacted by the authority of this preſent parliament, that the correction and puniſhment of ſuch as ſhall offend againſt this act, or any part thereof, within either of the two univerſities

Offences committed within univerſities.

ſities of this realm, or the precincts or liberties of the ſame, ſhall be done upon the offenders, and juſtice ſhall be miniſtred in this behalf, according to the intent and true meaning of this law, by the governors, magiſtrates, juſtices of the peace, or other principal officers of either of the ſame univerſities, to whom in other caſes the adminiſtration of juſtice, and correction and puniſhment of offenders, by the laws of this realm and their ſeveral charters doth belong or appertain, and that no other within their liberties, for any matter concerning this law contrary to their ſeveral charters, do intermeddle; (2) and that all penalties and ſums of money to be forfeited or loſt by force of this act, within either of the univerſities, or the liberties or precincts of the ſame, ſhall be levied by the officers or miniſters of either of the ſaid univerſities, to be from time to time in that behalf appointed by the vice-chancellors thereof for the time being reſpectively; (3) and that all powers and authorities either of impriſonment or otherwiſe before given or appointed by this act, ſhall by the governors, magiſtrates and principal officers aboveſaid, of either of the ſaid univerſities, be duly executed and done within either of the ſaid univerſities, and the liberties and precincts of the ſame, according to the true intent and meaning of this act."

4 Jac. 1. c. 4. **Stat. 4 *Jac.* 1. *c.* 4.** [*A. D.* 1606. *intituled*,] "An act to reſtrain the utterance of beer and ale to alehouſe-keepers, and tiplers not licenſed."

In what caſe only ale or beer may be ſold to an alehouſe keeper having no licence.

"For the better repreſſing of alehouſes, whereof the multitudes and abuſes have been and are found intolerable, and ſtill do and are like to increaſe: Be it enacted by the king's moſt excellent majeſty, and the lords ſpiritual and temporal, and the commons in this preſent parliament aſſembled, and by the authority of the ſame, that no perſon or perſons by himſelf, or by any other ways or means, directly or indirectly, ſhall at any time after three months next after the end of this preſent ſeſſion of parliament, ſell, utter or deliver, or cauſe to be ſold, uttered or delivered, any beer or ale, to any perſon or perſons, or into the houſe or cellar of any perſon or perſons that then ſhall ſell or utter beer or ale, as a common tipler or alehouſe-keeper, the ſame perſon not having any licence then in force to ſell ale or beer, other than for the convenient uſe and expence of his, her, or their houſhold only; (3) upon pain to forfeit for every barrel ſold, uttered or delivered contrary to the form and true meaning of this act, the ſum of ſix ſhillings eight pence, and ſo after that rate for a greater or leſſer quantity.

The abuſes of alehouſes intolerable.

None ſhall ſell ale or beer to an alehouſe-keeper not having licence, but for the expence of his houſhold.

II. "And be it further enacted by the authority aforeſaid, that all offences to be done or committed contrary to the true meaning of this act, and all penalties aforeſaid, ſhall be enquired of, ſued for, heard and determined in the ſeſſions of the peace for the county, city or borough, town or liberty, or in the court of record of the city, borough, town or liberty wherein ſuch offence ſhall be committed, by action of debt, information, indictment or preſentment, wherein no eſſoin, protection or wager of law ſhall be allowed to the defendant: (2) And the one half of all which forfeitures

In what courts the offences aforeſaid ſhall be heard and determined.

forfeitures ſhall be to the uſe of the poor people inhabiting within the city, borough, hundred, town or liberty where ſuch offences ſhall be committed from time, to time, and the other half thereof to him or them that will ſue for the ſame. Who ſhall have forfeitures.

III. " And to the end that the ſaid one half of the ſaid forfeitures above-limited to be to the uſe of the ſaid poor people, may be truly imployed and beſtowed upon them, according to the true meaning of this act: (2) Be it further enacted, that the ſheriff, bailiff, or other officer or perſon that ſhall levy or receive any ſum or ſums of money forfeited and recovered according to the true meaning of this act, ſhall and may by virtue of this act, without further warrant, deliver the one half of the ſame ſum and ſums of money, by him or them ſo levied or received, to ſome one or more of the churchwardens and overſeers of the poor of the ſame pariſh where the ſame offence ſhall be commited, to be by them and every of them, diſtributed and beſtowed amongſt the ſaid poor people, according to the true meaning of this act, who ſhall likewiſe have authority by virtue of this act, to diſtribute and beſtow the ſame accordingly. The poor's half of the forfeitures ſhall be delivered to the overſeers.

IV. " And be it further enacted, that every ſheriff, bailiff, and other officer and perſon which ſhall levy or receive any ſuch forfeiture or forfeitures aforeſaid, and ſhall pay over the moiety and one half thereof, according to the true meaning of this act, ſhall be thereof diſcharged againſt the king's majeſty, his heirs and ſucceſſors. The officer paying the moiety to the overſeers, ſhall be diſcharged thereof.

V. " And be it further enacted, that if any ſheriff, bailiff, or other officer or perſon ſhall refuſe to pay over the moiety and one half of the ſaid money by him or them levied or received, or that the ſaid churchwardens and overſeers, to whom the ſaid money ſhall be ſo paid, ſhall not from time to time, within convenient time, truly diſtribute and beſtow the ſame to and amongſt the poor people, according to the true meaning of this act, that then every perſon ſo offending ſhall forfeit double the value thereof, to be recovered, and imployed, as aforeſaid." The penalty for not diſtributing the money received to the poor.

Stat. 4 *Jac.* 1. *c.* 5. [*A. D.* 1606. *intituled,*] " An act for repreſſing the odious and loathſom ſin of drunkenneſs."

" Whereas the loathſom and odious ſin of drunkenneſs is of late grown into common uſe within this realm, being the root and foundation of many other enormous ſins, as bloodſhed, ſtabbing, murder, ſwearing, fornication, adultery, and ſuch like, to the great diſhonour of God, and of our nation, the overthrow of many good arts and manual trades, the diſabling of divers workmen, and the general impoveriſhing of many good ſubjects, abuſively waſting the good creatures of God: 4 Jac. 1. c. 5. The penalty of a drunkard, and of him that continueth drinking in an alehouſe.

II. " Be it therefore enacted by the king's moſt excellent majeſty, the lords ſpiritual and temporal, and commons in this preſent parliament aſſembled, and by the authority of the ſame, that all and every perſon or perſons, which after forty days next following the end of this preſent ſeſſion of parliament, ſhall be drunk, and of the ſame offence of drunkenneſs ſhall be lawfully convicted, ſhall for every ſuch offence forfeit and Drunkenneſs the foundation of many other ſins, and the cauſe of ſeveral enormities. 1 Salk. 45.

The forfeiture of him that is convicted of drunkenneſs. 7 Jac. 1. c. 10.

loſe five ſhillings of lawful money of *England*, to be paid within one week next after his, her or their conviction thereof, to the hands of the churchwardens of that pariſh where the offence ſhall be committed, who ſhall be accountable therefore to the uſe of the poor of the ſame pariſh: (2) And if the ſaid perſon or perſons ſo convicted, ſhall refuſe or neglect to pay the ſaid forfeiture, as aforeſaid, then the ſame ſhall be from time to time levied of the goods of every ſuch perſon or perſons ſo refuſing or neglecting to pay the ſame, by warrant or precept from the ſame court, judge or juſtices before whom the ſame conviction ſhall be: (3) And if the offender or offenders be not able to pay the ſaid ſum of five ſhillings, then the offender or offenders ſhall be committed to the ſtocks for every offence, there to remain by the ſpace of ſix hours.

The penalty for refuſing, or being not able to pay the forfeiture.

The forfeiture of an inferior officer that doth neglect to do his duty.

III. "And be it further enacted by the authority aforeſaid, that if any conſtable, or any other inferior officer of that pariſh or place where the offence ſhall be committed, to whom that ſhall be given in charge by the precept of any mayor, bailiff, other head officer, or or juſtices of the peace within their ſeveral limits, do neglect the due correction of the ſaid offender, or the due levying of the ſaid penalties, where diſtreſs may be had; Then every perſon ſo offending ſhall forfeit the ſum of ten ſhillings of current money of *England*, to the uſe of the poor of the ſame pariſh or place where the offence ſhall be committed, to be levied by way of diſtreſs, by any other perſon or perſons having warrant from any mayor, bailiff, or other head officer, juſtices of peace, or court where any ſuch conviction ſhall be, and to be paid to the churchwardens, as beforelimited, who are alſo to account for the ſame to the uſe aforeſaid.

The penalty for continuing drinking in an alehouſe, &c. 7 Jac. 1. c. 10. Farther proviſions relating hereto. 1 Car. 1. c. 4. 1 Jac. 1. c. 9.

IV. "And be it further enacted by the authority aforeſaid, that if any perſon or perſons within this realm of *England*, or the dominion of *Wales*, ſhall remain or continue drinking or tipling in any inn, victualling-houſe or alehouſe, being in the ſame city, town, village, or hamlet wherein the ſaid perſon or perſons (ſo remaining drinking or tipling) doth dwell and inhabit at the time of ſuch drinking and tipling; and the ſame being viewed and ſeen by any mayor, or other head officer, juſtice or juſtices of peace within their ſeveral limits, or duly proved in ſuch manner and form as is limited in and by one act of parliament made in the firſt ſeſſion of this preſent parliament, intituled, *An act to reſtrain the inordinate haunting and tipling in inns, alehouſes, and other victualling-houſes*, unleſs it be in ſuch caſe or caſes as be tolerated or excepted in the ſaid act; that then every perſon or perſons ſo offending, ſhall forfeit and loſe for every ſuch offence the ſum of three ſhillings and four pence, of current money of *England*, to the uſe of the poor of the pariſh where the ſaid offence ſhall be committed, to be levied by way of diſtreſs, in ſuch manner and form as is before appointed by this act, for the levying of the penalty of five ſhillings for being drunk: (2) And if it happen that any offender or offenders againſt the true intent of this clauſe or branch, being thereof lawfully convicted, be not able to pay the ſaid forfeiture or forfeitures, then it ſhall and may be lawful for any mayor, bailiff or other head officer, juſtice or juſtices of peace, or court where any ſuch conviction ſhall be, to puniſh the

the ſaid offender or offenders by ſetting him, her or them in the ſtocks for every ſuch offence, by the ſpace of four hours.

What officers ſhall enquire of and puniſh the offences committed againſt this ſtatute, and the ſtatute of 1 Jac. 1. c. 9.

V. " For the more due execution of this ſtatute, and for the better and more due proceeding againſt ſuch offenders, all offences of drunkenneſs, and of exceſs and unmeaſurable drinking, (2) Be it further enacted by the authority of this preſent parliament, that all the offences in this act, and in the ſaid former act mentioned, ſhall be from time to time diligently enquired of, and preſented before the juſtices of aſſizes in their circuit, juſtices of the peace in their quarter or ordinary ſeſſions, and before the mayors, bailiffs or other head officers of every city or town corporate, who have power to enquire of treſpaſſes, riots, routs, forces, and ſuch like offences, and in every court-leet, and thereupon ſuch due proceeding ſhall be againſt the offender and offenders for their due conviction in that behalf, as in ſuch like caſes upon any indictment or preſentment is uſed by the laws of the realm, or cuſtoms of the city, town or place where ſuch preſentment or indictment ſhall be enquired of and found.

He that is the ſecond time convicted of drunkenneſs, ſhall be bound to his good behaviour.

VI. " And it is further enacted by the authority aforeſaid, that if any perſon or perſons, being once lawfully convicted of the ſaid offence of drunkenneſs, ſhall after that be again lawfully convicted of the like offence of drunkenneſs, that then every perſon and perſons ſo ſecondly convicted of the ſaid offence of drunkenneſs, ſhall be bounden with two ſureties to our ſovereign lord the king's majeſty, his heirs and ſucceſſors, in one recognizance or obligation of ten pounds, with condition, to be from thenceforth of good behaviour.

What officers ſhall preſent the offences aforeſaid.

VII. " Be it further enacted by the authority aforeſaid, that all conſtables, church-wardens, headboroughs, tythingmen, aleconners and ſidemen, ſhall in their ſeveral oaths incident to their ſeveral offices, be charged in like ſort to preſent the offences contrary to this ſtatute.

No reſtraint of eccleſiaſtical juriſdictions.

VIII. " Provided always, that this act, or any thing therein contained, do not in any wiſe abridge or reſtrain the eccleſiaſtical power or juriſdiction, but that all ordinaries, and other eccleſiaſtical judges and officers, ſhall and may proceed to enquire of, cenſure and puniſh all ſuch offenders, according to the eccleſiaſtical law of this realm, in ſuch manner and form as before they lawfully might do; any thing in this act to the contrary notwithſtanding.

There ſhall be but one puniſhment for one offence.

IX. " Provided alſo, that when any of the offenders againſt the true intent of this act, or any branch or article thereof, hath been once puniſhed or corrected for his or her offence, by any the ways and means before limited; that then the ſaid offender ſhall not be eftſoons puniſhed or corrected for the ſame offence by any other ways or means.

The liberties of the univerſities ſhall not be prejudiced.

X. " Provided always, that this act, or any thing therein contained, ſhall not be prejudicial to either of the two univerſities of this land, but that the chancellor, maſters and ſcholars, and the ſucceſſors of them, and either of them, may as fully uſe and enjoy all their juriſdictions, rights, privileges and charters, as heretofore they have or might have done; any thing in this act to the contrary notwithſtanding.

Within what time an offender ſhall be preſented

The continuance of this act.

XI. "Provided always, that no perſon or perſons ſhall be puniſhed, impeached or moleſted for any offence mentioned in this ſtatute, unleſs he ſhall be for the ſame offence preſented, indicted or convicted within ſix months after ſuch offence committed: (2) This act to continue until the end of the firſt ſeſſion of the next parliament."

[This act is made perpetual by 21 *Jac.* 1. *c.* 7. but 21 *Jac.* 1. *c.* 28. *ſect.* 1. continues it only to the end of the firſt ſeſſion of the (then) next parliament. By the ſecond ſection, however, of the ſaid act 21 *Jac.* 1. *c.* 28. it is provided, that ſo much of the act 4 *Jac.* 1. *c.* 5. as by any new act made in that ſeſſion of parliament (*viz.* 21 Jac. 1.) ſhould be explained, altered, or repealed, ſhould for ſo much thereof from the end of that ſeſſion of parliament, ſtand and be in force, as by thoſe other acts ſhould be ordained. Now, as the ſaid act of 4 *Jac.* 1. *c.* 5. was expreſly mentioned to be *altered* by the act 21 *Jac.* 1. *c.* 7. it follows that the act 4 *Jac.* 1. *c.* 5. remains in force, notwithſtanding the act 21 *Jac.* 1. *c.* 28. And it is enforced as perpetual by 1 *Car.* 1. *c.* 4.]

7 Jac. 1. c. 10. **Stat.** 7 *Jac.* 1. *c.* 10. [*A. D.* 1609. *intituled*] "An act for reformation of alehouſe-keepers."

The penalty for an offence committed againſt the ſtatute 4 Jac. 1. c. 5.

"Whereas notwithſtanding all former laws and proviſions already made, the inordinate and extreme vice of exceſſive drinking and drunkenneſs doth more and more abound, to the great offence of almighty God, and the waſtful deſtruction of God's good creatures, be it enacted by the authority of this preſent parliament, that if any perſon being an alehouſe-keeper (after ſix weeks next enſuing this preſent ſeſſion of parliament) ſhall be lawfully convicted for any offence or offences committed againſt any of the branches of two former acts of parliament made ſithence the beginning of this preſent parliament, the one intituled, *An act to reſtrain the inordinate haunting and tipling in inns, alehouſes, and other victualling-houſes*; the other intituled, *An act againſt the odious and loathſom ſin of drunkenneſs*; that then every perſon or perſons ſo convicted, ſhall for the ſpace of 3 years next enſuing the ſaid conviction, be utterly diſabled to keep any ſuch alehouſe."

4 Jac. 1. c. 5.
1 Jac. 1. c. 9.

21 Jac. 1. c. 7. **Stat.** 21 *Jac.* 1. *c.* 7. [*A. D.* 1623. *intituled,*] "An act for the better repreſſing of drunkenneſs, and reſtraining the inordinate haunting of inns, alehouſes, and other victualling-houſes."

The ſtatutes of 1 Jac. 1. c. 9. 4 Jac. 1. c. 5. made perpetual.

One witneſs ſhall be ſufficient to convince a man of tipling and drunkenneſs.

"Whereas one ſtatute, intituled, *An act to reſtrain the inordinate haunting or tipling in inns, alehouſes, and other victualling-houſes*, made in the firſt year of his highneſs happy reign of *England*; and another ſtatute, intituled, *An act to repreſs the odious and lothful ſin of drunkenneſs*, made in the fourth year of his highneſs reign of *England*, were made to continue to the end of the firſt ſeſſion of the next parliament, and by experience have been found good and neceſſary laws; Be it therefore enacted, that the ſaid ſtatutes, with the alterations and additions hereafter expreſſed, ſhall be put in due execution, and continue for ever: (2) And whereas by the ſaid ſtatutes,

ſtatutes, proof of two witneſſes is required, Be it enacted, that proof of one witneſs from henceforth ſhall be allowed and taken for ſufficient in that behalf: (3) And that the voluntary confeſſion (before any ſuch perſons as by the ſaid act are authorized to miniſter the oath) of any perſon offending either of the ſaid ſtatutes, ſhall ſuffice to convince the perſon ſo offending; (4) after ſuch confeſſion, the oath of the party ſo *confeſſing*, ſhall and may be taken, and be a ſufficient proof againſt any other offending at the ſame time.

The oath of him that confeſſeth the offence, ſhall be a ſufficient proof againſt any other.

II. " And be it further enacted, that if any other perſon or perſons, whereſoever his or their habitation or abiding be, ſhall at any time hereafter be found upon view, or his own confeſſion, or proof of one witneſs, to be tipling in any inn, alehouſe or victualling-houſe, ſuch perſon or perſons ſhall be from henceforth adjudged and conſtrued to be within the ſaid ſtatutes, as if he or they had inhabited and dwelt in the city, town corporate, market-town, village or hamlet where the ſaid inn, alehouſe or victualling-houſe is, or ſhall be, where he or they ſhall be ſo found tipling, and ſhall incur the like penalty, and the ſame to be in ſuch ſort levied and diſpoſed, as in the ſaid act is expreſſed, concerning ſuch as there inhabit: (2) And the voluntary confeſſion of ſuch perſon or perſons ſo offending, before ſuch as by the ſaid ſtatutes are authorized to miniſter the oath, ſhall ſuffice to convince themſelves; (3) and after ſuch confeſſion, the oath of ſuch perſon or perſons ſo confeſſing, ſhall and may be taken by ſuch as by the ſaid act have authority to miniſter an oath, and ſhall be a ſufficient proof againſt any other offending at that time.

He that ſtays tipling in an inn, &c. ſhall incur the penalty inflicted by 4 Jac. 1. c. 5.

III. " And be it further enacted, that any juſtice of peace in any county, and any juſtice of peace or other head officer in any city or town corporate, within their limits reſpectively, ſhall from henceforth have power and authority, upon his own view, confeſſion of the party, or proof of one witneſs upon oath before him, which he by virtue of this act ſhall have power to adminiſter, to convict any perſon of the offence of drunkenneſs, whereby ſuch perſon ſo convict ſhall incur the forfeiture of five ſhillings for every ſuch offence, and the ſame to be levied, or the offender otherwiſe puniſhed, as in the ſaid ſtatute is appointed: And for the ſecond offence, he ſhall become bound to the good behaviour as if he had been convicted in open ſeſſions; any thing in the ſaid former ſtatute made in the fourth year of his majeſty's reign to the contrary notwithſtanding.

He that is convicted of drunkenneſs, ſhall forfeit 5s.

For the ſecond offence he ſhall be bound to the good behaviour.

IV. " And be it further enacted, that if any perſon being an alehouſe-keeper, or that ſhall at any time hereafter be an alehouſe-keeper, ſhall at any time hereafter be lawfully convict for any offence againſt any the branches of either of the ſaid two former ſtatutes, according to the alterations and additions therein contained, or againſt the true meaning of this preſent ſtatute, that every perſon ſo convict ſhall, for the ſpace of three years next enſuing the ſaid conviction, be utterly diſabled to keep any ſuch alehouſe.

An alehouſe-keeper offending, ſhall be diſabled from keeping an alehouſe three years after.

V. " And whereas in the ſaid ſtatute made in the fourth year of his ſaid majeſty's reign, intituled, *An act to repreſs the odious and loathſome ſin of drunkenneſs*, conſtables, church-wardens, headboroughs, tithingmen, aleconners

4 Jac. 1. c. 5. conſtables, &c. ſhall be charged (on their oaths) to pre-

ſent the offences committed againſt 1 Jac. 1. c. 9.

aleconners and ſidemen are appointed in the oaths incident to their offices, to be likewiſe charged to preſent the offences contrary to the ſaid ſtatute; (2) Be it enacted, that the ſaid oath ſhall always hereafter be alſo enlarged, and extend to preſent all offences done contrary to the ſtatute made in the firſt ſeſſion of parliament held in the firſt year of his highneſs reign, intituled, *An act to reſtrain the inordinate haunting and tipling in inns and alehouſes, and other victualling-houſes*, with the alterations and additions in this act contained, made in the ſaid fourth year of his ſaid majeſty's reign, according to the alterations and additions of the ſame in this act expreſſed. 1 *Car.* 1. *c.* 4.

1 Car. 1. c. 4. Stat. 1 *Car.* 1. *c.* 4. [*A. D.* 1625. *intituled*,] "An Act for the further reſtraint of tippling in inns, alehouſes, and other victualling-houſes."

Stat. 1. *Car.* 1. *c.* 4. Foreigners, as well as inhabitants, ſhall not be permitted to tipple in inns, alehouſes, &c. 1 Ja. 1. c. 9. 4 Ja. 1. c. 5.

"Whereas in the laſt parliament it was enacted, that if any perſon or perſons, whereſoever his or their habitation or abiding be, ſhould after be found upon view, or his own confeſſion, or proof of one witneſs to be tippling in any inn, alehouſe, or victualling-houſe; ſuch perſon or perſons ſhould be thenceforth adjudged and conſtrued to be within the ſtatutes of the firſt and fourth years of the late king's majeſty's reign, king *James* of famous memory; the one intituled, *An act to reſtrain the inordinate haunting of tippling in inns, alehouſes, and other victualling-houſes*; and the other intituled, *An act to repreſs the odious and loathſome ſin of drunkenneſs*, as if he or they had inhabited and dwelled in the city, town corporate, market-town, village or hamlet where the inn, alehouſe or victualling-houſe was, or ſhould be, where he or they ſhould be ſo found tippling, ſhould incur the like penalty, and the ſame to be in ſuch ſort levied and diſpoſed, as in the ſaid act is expreſſed, concerning ſuch as there inhabit; (2) but no puniſhment by any or either of the ſaid acts, or by any other ſtatute, is inflicted upon the inn-keeper, alehouſe-keeper, or victualler that permits or ſuffers ſuch perſon or perſons not there inhabiting, to tipple in his inn, alehouſe or victualling-houſe: (3) for remedy whereof, be it enacted, that every inn-keeper, alehouſe-keeper, and other victualler, that at any time after the end of this ſeſſion of parliament, ſhall permit and ſuffer any perſon or perſons not inhabiting in the city, town corporate, market-town, village or hamlet where ſuch inn, alehouſe or victualling-houſe is or ſhall be, to tipple in the ſaid inn, alehouſe or victualling-houſe, contrary to the true intent of any or either of the ſaid former ſtatutes, the ſaid inn-keeper, alehouſe-keeper and victualler ſo offending, ſhall incur the ſame penalty, and in ſuch manner to be proved, levied and diſpoſed, as in the former ſtatute of the firſt year of his ſaid late majeſty's reign is appointed for permitting ſuch to tipple as dwell in the ſame city, town corporate, market-town, village or hamlet.

1 Ja. 1. c. 9.

Vintners and victuallers to be within this and the other ſtatutes.

II. "And be it further enacted, that the keepers of taverns, and ſuch as do ſell wine in their houſes, and do alſo keep inns, or victualling in their houſes, ſhall be taken to be within the ſaid two former ſtatutes, and alſo within this ſtatute.

Stat.

Stat. 3 *Car.* 1. *c.* 3. [*A. D.* 1627. *intituled,*] "An Act for the better ſuppreſſing of unlicenſed alehouſe-keepers." 3 Car. 1. c. 3.

"Whereas by an act made in the fifth year of the reign of king *Edward* the ſixth of famous memory, intituled, *An act for keepers of alehouſes to be bound by recognizance*, amongſt other things it is enacted, that if any perſon or perſons, other than ſuch as ſhould be from thenceforth admitted and allowed by the juſtices mentioned in the ſaid act, ſhould after the day in the ſaid act limited, obſtinately and upon his own authority, take upon him or them to keep a common alehouſe or tippling-houſe, or ſhould contrary to the commandment of the ſaid juſtices, or two of them, uſe commonly ſelling of ale or beer, that then the ſaid juſtices of peace, or two of them, (whereof one to be of the *quorum*) ſhould for every ſuch offence, commit every ſuch perſon or perſons ſo offending to the common gaol within the ſame ſhire, city, borough, town corporate, franchiſe or liberty, there to remain without bail or mainpriſe by the ſpace of three days; (2) And before his or their deliverance, the ſaid juſtices ſhould take recognizance of him or them ſo committed, with two ſureties that he or they ſhould not keep any common alehouſe, tippling-houſe, or uſe commonly ſelling of ale and beer, as by the diſcretion of the ſaid juſtices ſhould ſeem convenient: (3) and the ſaid juſtices ſhall make certificate of every ſuch recognizance and offence, at the next quarter-ſeſſions that ſhould be holden within the ſame ſhire, city, borough, town corporate, franchiſe or liberty where the ſame ſhould be committed or done; (4) which certificate ſhould be a ſufficient conviction in law of the ſame offence: (5) and the ſaid juſtices of peace, upon the ſaid certificate made, ſhould in open ſeſſions aſſeſs the fine for every ſuch offence, at twenty ſhillings, as by the ſaid act may appear: (6) which law hath not wrought ſuch reformation as was intended, for that the ſaid fine of twenty ſhillings is ſeldom levied, and for that many of the ſaid offenders, by reaſon of their poverty, are neither able to pay the ſaid fine of twenty ſhillings, nor yet to bear their own charges of conveying them to the gaol; and moreover, do leave a great charge of wife and children upon the pariſhes wherein they live: in regard whereof, the conſtables and other officers are much diſcouraged in preſenting them, and the offenders become obſtinate and incorrigible:

The forfeiture and puniſhment of him that keeps an alehouſe without licence. 5 & 6 Ed. 6. c. 25.

II. "For remedy whereof, be it enacted by the authority of this preſent parliament, that if any perſon or perſons, after forty days next enſuing the end of this preſent ſeſſion of parliament, ſhall upon his own authority, not being thereunto lawfully licenſed, take upon him or them, to keep a common alehouſe or tippling-houſe, or uſe commonly ſelling of ale or beer, cyder or perry, that then every ſuch perſon or perſons ſhall for every ſuch offence forfeit and loſe the ſum of twenty ſhillings of current money of *England*, to the uſe of the poor of the pariſh where ſuch offence ſhall be committed; the ſame offence being viewed and ſeen by any mayor, bailiff, or juſtice of peace, or other head-officer, within their ſeveral limits, or confeſſed by the party ſo offending, or proved by the oath of two witneſſes, to be taken before any mayor, bailiff, or other head officer, or

He that keeps an alehouſe, &c. without licence, ſhall forfeit 20s. Altered by 26 Geo. 2. c. 31. and 5. Geo. 3. c. 46.

any

any one or more juſtice or juſtices of the peace, who by virtue of this act ſhall be authorized to miniſter the ſaid oath to any perſon or perſons that can or will juſtify the ſame, being within the limits of their ſaid commiſſion: (2) The ſaid penalty to be levied by the conſtables or churchwardens of the pariſh or pariſhes where the ſaid offence ſhall be committed; who ſhall be accountable therefore to the uſe of the poor of the ſaid pariſh, by way of diſtreſs to be taken and detained by warrant or precept from the ſaid mayor, bailiff, juſtice or juſtices, or other head-officer, by whom the ſaid offence ſhall he viewed, or before whom the ſame ſhall be confeſſed, or proved, as aforeſaid: (3) And for default of ſatisfaction within three days next enſuing, the ſaid diſtreſs to be by the ſaid conſtables or church-wardens appraiſed and ſold, and the overplus to be delivered to the party or parties offending, and this to be only for the firſt offence: (4) And if ſuch offender or offenders ſhall not have ſufficient goods and chattels, whereby the ſaid twenty ſhillings may be levied by way of diſtreſs, as aforeſaid, or ſhall not pay the ſaid ſum of twenty ſhillings within ſix days after ſuch conviction, as aforeſaid, that then the ſaid mayor, bailiff, juſtice or juſtices, or other head-officer, before whom the ſaid offender ſhall be convicted, as aforeſaid, ſhall commit all and every the ſaid offender or offenders to ſome conſtable or conſtables, or other inferior officer or officers of the city, borough, town, pariſh or hamlet where the offence ſhall be committed, or the party apprehended, to be openly whipped for the ſaid offence, as the ſaid juſtice or juſtices ſhall limit or appoint.

The conſtables or church-wardens ſhall levy the ſaid forfeiture to the uſe of the poor.

The party that is not able to pay the forfeiture ſhall be whipped.

III. " And be it enacted by the authority aforeſaid, that if any conſtable or inferior officer ſhall neglect to execute the ſaid precept or warrant, or do refuſe, or do not execute by himſelf, or ſome other to be by him appointed, upon the offender, the puniſhment limited by this ſtatute, that in that caſe, it ſhall and may be lawful for the ſaid mayor, bailiff, juſtice or juſtices of peace, or other head-officer, to commit the conſtable or other inferior officer ſo refuſing, or not executing the ſaid puniſhment by himſelf or ſome other, to the common gaol of the ſaid county, city, or town corporate, there to remain without bail or mainprize, until the ſaid offender or offenders ſhall be by the ſaid conſtable or conſtables, or other inferior officer ſo refuſing, or not executing the ſaid puniſhment, or ſome by his or their procurement, puniſhed or whipped, as is above limited and declared, or until he or they ſo neglecting or refuſing, ſhall have paid the ſum of forty ſhillings of lawful money of *England*, unto the uſe of the poor of the pariſh, for their ſaid contempt.

The officer neglecting to puniſh the offender, ſhall be impriſoned, or pay forty ſhillings.

IV. " And be it further enacted, that if the ſaid offender or offenders being an unlicenſed alehouſe-keeper, ſhall offend in any the premiſſes the ſecond time, and be thereof lawfully convicted in manner and form aforeſaid, that then the ſaid mayor, bailiff, juſtice or juſtices of the peace, or other head-officer, ſhall commit him, her, or them unto the houſe of correction, there to remain for the ſpace of one month, and be dealt withal as idle, lewd and diſorderly perſons: (2) And if ſuch perſon or perſons ſhall again offend, and ſhall be thereof convicted, as aforeſaid, that then the ſaid offender and offenders for every ſuch offence, ſhall be committed unto the

For the ſecond and third offence the offender ſhall be committed to the houſe of correction.

the ſaid houſe of correction, as aforeſaid, there to remain, until by the order of the juſtices in their general ſeſſions for the county, city, borough or franchiſe, he, ſhe or they ſhall be delivered from thence.

V. " Provided always, that ſuch offender or offenders as ſhall be puniſhed by virtue of this act, ſhall not be puniſhed again for the ſame offence by the former act made in the fifth year of king *Edward* the ſixth afore-mentioned; (2) and that ſuch offender or offenders as ſhall be puniſhed by virtue of the before-mentioned act made in the fifth year of king *Edward* the ſixth, ſhall not be puniſhed again for the ſame offence by virtue of this preſent act, nor any thing therein contained.

The offender puniſhed by this act, ſhall not be again puniſhed by 5 & 6 Ed. 6. c. 25. & contra.

VI. " Provided always, that in ſuch towns and places where any fair or fairs ſhall be kept, that for the time only of the ſame fair or fairs, it ſhall be lawful for every perſon or perſons to uſe common ſelling of ale or beer in booths, or other places there, for the relief of the king's ſubjects that ſhall repair unto the ſame, in ſuch like manner and ſort as hath been uſed and done in times paſt; this act, or any thing therein contained to the contrary notwithſtanding."

Alehouſes kept in the time of fairs excepted.

Stat. 2 *Geo.* 2. *c.* 28. [*A. D.* 1729.] made, among other purpoſes, *for better regulation of licences for common inns and alehouſes.*

2 Geo. 2. c. 28.

Sect. 11. " And whereas many inconveniences have ariſen from perſons being licenſed to keep inns, and common alehouſes, by juſtices of the peace, who living remote from the places of abode of ſuch perſons, may not be truly informed as to the occaſion or want of ſuch inns or common alehouſes, or the characters of the perſons applying for licences to keep the ſame, be it therefore enacted by the authority aforeſaid, that from and after the 24th day of *June* 1729, no licence ſhall be granted to any perſon to keep a common inn or alehouſe, or to retail any brandy or ſtrong waters, but at a general meeting of the juſtices of peace, acting in the diviſion where the ſaid perſon dwells, to be holden for that purpoſe, on the 1ſt day of *September* yearly, or within twenty days after, or at any other general meeting of the ſaid juſtices, to be holden for the diviſion wherein the ſaid perſon reſides; and all licences which ſhall, after the ſaid 24th day of *June* 1729, be granted to the contrary hereof, ſhall be null and void.

No licence to keep inns or alehouſes to be granted, but at a general meeting of the juſtices. Repealed by 26 Geo. 2. c. 31. ſ. 4.

Sect. 12. " Provided always, that nothing herein contained ſhall extend, or be conſtrued to extend, to oblige perſons already licenſed, to take out new licences on the 1ſt day of *September* 1729, or within twenty days after, but that the licences already granted ſhall ſubſiſt and be valid, until the 1ſt of *September* 1730; any thing in this act contained to the contrary notwithſtanding; nor ſhall any thing herein contained extend to alter the method or power of granting licences for keeping of common inns, alehouſes or brandy-ſhops, in any city or town corporate."

Licences already granted to ſubſiſt till 1ſt September 1730.

Stat. 26 *Geo.* 2. *c.* 13. [*A. D.* 1753.] *ſect.* 12. " It is enacted, that from and after the 24th day of *June* 1753, no juſtice of the peace, being a common brewer of ale or beer, innkeeper or diſtiller, or other ſeller of

26 Geo 2. c. 13. Juſtices being brewers, innkeepers, diſ-

tillers, victuallers or maltſters, &c. prohibited from granting licences for ſelling ale, &c.

or dealer in ale or any kind of ſpirituous liquors, or intereſted in any of the ſaid trades or buſineſs, or being a victualler or maltſter, ſhall during ſuch time as he ſhall be ſuch common brewer, innkeeper, diſtiller, victualler or maltſter, or other ſeller of or dealer in ale or ſpirituous liquors, or intereſted in any of the ſaid trades or buſineſſes, be capable or have any power to grant any licence or licences to any perſon or perſons whatſoever, for ſelling ale, beer, or any other liquors by retail; and in caſe any ſuch juſtice or juſtices ſhall, contrary to the true intent and meaning hereof, preſume to grant any ſuch licence, the ſame ſhall be and is hereby declared to be null and void to all intents and purpoſes whatſoever.

26 Geo. 2. c. 31.

Stat. 26 *Geo.* 2 *c.* 31. [*A. D.* 1753. *intituled*,] "An act for regulating the manner of licenſing alehouſes in that part of *Great Britain* called *England*; and for the more eaſy convicting perſons ſelling ale and other liquors without licence.

Juſtices licenſing alehouſes, &c. to take recognizance in the ſum of 10 l. for the maintenance of good order;

"Whereas the laws concerning alehouſes, inns and victualling-houſes, and the licenſing thereof, are defective and inſufficient for correcting and ſuppreſſing the abuſes and diſorders frequently done and committed therein, and alſo for the conviction and due puniſhment of perſons taking upon themſelves to ſell ale, beer or other liquors by retail without licence; Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal and commons in this preſent parliament aſſembled, and by the authority of the ſame, That upon granting licences by juſtices of the peace to any perſon to keep an alehouſe, inn, victualling-houſe, or to ſell ale, beer and other liquors by retail, every ſuch perſon ſhall enter into a recognizance to the king's majeſty, his heirs and ſucceſſors, in the ſum of ten pounds, with two ſufficient ſureties, each in the ſum of five pounds, or one ſufficient ſurety in the ſum of ten pounds, under the uſual condition, for maintenance of good order and rule within the ſame; and in caſe the perſon applying for ſuch licence ſhall be hindered through ſickneſs or infirmity, or any other reaſonable cauſe, to be allowed by the ſaid juſtices of peace, to attend in perſon at the meetings of the ſame juſtices for granting the ſaid licences, then that it ſhall and may be lawful for them to grant ſuch licence, upon two ſufficient ſureties entering into ſuch recognizance, each in the penalty of ten pounds, for performance of the condition of the ſaid recognizance; which ſaid recognizance, with the condition thereof, fairly written or printed, ſhall forthwith, or at the next general or quarter ſeſſion of the peace at fartheſt, after granting ſuch licences, be ſent or returned to the clerks of the peace, or perſons acting as ſuch, for every county, riding, city, liberty or town corporate in that part of *Great Britain* called *England*, wherein ſuch licences ſhall be granted, under the hands of the juſtices of the peace before whom ſuch recognizances were taken, to be by the ſaid clerks of the peace, or ſuch other perſon acting as ſuch, duly entered or filed amongſt the records of the ſeſſions of the peace; and that for every ſuch licence granted without taking ſuch recognizance, and for every ſuch recognizance taken, and not ſent or returned

and to ſend the recognizances to the clerks of the peace,

on penalty of 3 l. 6 s. 8 d.

as aforeſaid, every juſtice of the peace ſigning ſuch licence ſhall forfeit the ſum of three pounds ſix ſhillings and eight pence.

II. " And for the better preventing diſorders in alehouſes, be it further enacted, that no licence to keep the ſame ſhall be granted to any perſon not licenſed the year preceding, unleſs ſuch perſon produce at the general meeting of the juſtices in *September*, a certificate under the hands of the parſon, vicar or curate, and the major part of the churchwardens and overſeers, or elſe of three or four reputable and ſubſtantial houſeholders and inhabitants of the pariſh or place where ſuch alehouſe is to be, ſetting forth that ſuch perſon is of good fame and of ſober life and converſation; and it ſhall be mentioned in ſuch licence, that ſuch certificate was produced, otherwiſe ſuch licence ſhall be null and void. Licences to be granted to none not licenſed the year preceding, unleſs ſuch as ſhall produce certificates of their good fame.

III. " Provided nevertheleſs, that if any licenſed perſon ſhall die or remove from an alehouſe, it ſhall be lawful for the perſon ſucceeding to ſuch houſe to keep on the ſaid alehouſe during the reſidue of the term of ſuch licence, on condition that within thirty days after ſuch death or removal ſuch perſon obtain ſuch certificate as aforeſaid, to be ſigned by ſome neighbouring juſtice, in order to its being produced at the next general meeting in *September*; and if ſuch certificate be not ſo obtained and ſigned within the ſaid thirty days, then immediately from and after the expiration thereof, ſuch licence ſhall be null and void; and no licence ſhall intitle any perſon to keep an alehouſe in any other place than that in which it was firſt kept by virtue of ſuch licence, and ſuch licence, with regard to all other places, ſhall be null and void. Licenſed perſon dying or removing, the ſucceſſor, upon obtaining ſuch certificate, may keep on the houſe for the reſidue of the term of the licence, &c.

IV. " Whereas by an act made in the ſecond year of his preſent majeſty's reign, intituled, *An act to revive the laws therein mentioned*, &c. amongſt other things it was enacted, that no licence ſhall be granted to any perſon to keep a common inn or alehouſe, or to retail any brandy or ſtrong waters, but at a general meeting of the juſtices of the peace acting in the diviſion where the ſaid perſon dwells, to be holden on the firſt day of *September* yearly, or within twenty days after; or at any other general meeting of the ſaid juſtices to be holden for the diviſion wherein the ſaid perſon reſides; which regulation, by reaſon of the laſt-mentioned proviſion, has been found by experience not to have the effect intended by the ſaid regulation; Be it therefore enacted by the authority aforeſaid, that the laſt before-mentioned proviſion ſhall be and is hereby repealed; and that from henceforth no licence for the purpoſes aforeſaid ſhall be granted, but on the firſt day of *September* yearly, or within twenty days after; and that ſuch licence ſhall be made for one year only, to commence on the twenty-ninth day of the ſaid *September*; and that the day and place for granting ſuch licences ſhall be appointed by two or more of the juſtices acting for the diviſion, by a warrant under their hands and ſeals, at leaſt ten days before ſuch meeting, directed to the high conſtable or high conſtables of the ſaid diviſion, requiring him or them to order his or their reſpective petty conſtables or other peace officers, to give notice to the ſeveral inn-keepers and alehouſe-keepers within their reſpective conſtablewicks, of the day and place of ſuch meeting; and all licences hereafter granted at any other time 2 Geo. 2. c. 28. ſ. 11. Laſt proviſion in the ſaid clauſe repealed. Licences to be granted on 1ſt Sept. or 20 days after, and the ſame to be made but for one year; Notice to be given of the time and place for granting them.

time or place ſhall be null and void to all intents and purpoſes whatſoever.

Clerks of the peace to deliver copies of the recognizances to the juſtices at their general meetings for granting licences, yearly.

V. " And be it further enacted, that the clerks of the peace ſhall keep a regiſter or calendar of all the recognizances ſo ſent or returned, and ſhall deliver or cauſe to be delivered to the juſtices of the peace at their general meetings in *September* every year, for granting licences in each diviſion or place, a true copy of ſuch regiſter or calendar; and that for every recognizance there ſhall be paid by the clerk or clerks of the juſtices taking ſuch recognizances to the ſaid clerks of the peace, as their fee for filing or recording the ſaid recognizance, and for making and delivering copies of the ſaid regiſter or calendar thereof, as aforeſaid, the ſum of one ſhilling, and no more; which ſhall be paid to the clerks of the ſaid juſtices by the perſons licenſed, over and above the fees payable to the ſaid juſtices clerks.

Recovery of the forfeitures for granting licences without taking a recognizance.

VI. " And be it enacted by the authority aforeſaid, that the ſaid forfeitures for granting ſuch licences, without taking recognizances, ſhall and may be ſued for and recovered by action of debt, bill, plaint or information, in any of his majeſty's courts of record at *Weſtminſter*, for the uſe of the perſon or perſons who ſhall ſue or proſecute for the ſame, together with coſts of ſuit; wherein no eſſoin, wager of law, or more than one imparlance ſhall be allowed.

Where a juſtice ſhall adjudge the recognizance to be forfeited, he is to ſummon the party to the quarter-ſeſſions, &c.

VII. " And be it further enacted by the authority aforeſaid, that any juſtice of the peace of any county, riding, city, liberty or town corporate, wherein ſuch licence ſhall be granted, upon complaint or information that ſuch licenſed perſon hath done or committed any act, offence or miſdemeanor, whereby in the judgment of the ſame juſtice ſuch recognizance may be forfeited, or the condition thereof broken, may by ſummons under his hand and ſeal require ſuch perſon ſo complained of, or informed againſt, to appear at the next general or quarter ſeſſion of the peace for the ſaid county, riding, city, liberty or town corporate, then and there to anſwer to the matter of ſuch complaint or information; and alſo may bind the perſon or perſons who ſhall make ſuch complaint or information, or any other perſon or perſons, in a recognizance to appear at ſuch general or quarter ſeſſion, and give evidence againſt ſuch perſon ſo complained of or informed againſt; and the juſtices of the peace in their general or quarter ſeſſions ſhall have power to direct the jury which ſhall attend at ſuch ſeſſions for the trial of traverſes, or ſome other jury of twelve honeſt and ſubſtantial men, to be then and there impanelled by the ſheriff, without fee or reward, to inquire of the miſdemeanor charged in the ſaid complaint or information; and if ſuch jury ſhall find that the perſon ſo complained of, or informed againſt, hath done any act whereby the condition of his recognizance is broken, ſuch act being ſpecified in ſuch complaint or information, it ſhall and may be lawful for the court at ſuch general or quarter ſeſſions to adjudge ſuch perſon guilty of the breach of ſuch recognizance; which verdict and adjudication ſhall be final to all intents and purpoſes; and thereupon the ſaid juſtices ſhall order the recognizance entered into by ſuch offender to be eſtreated into his majeſty's court of *Exchequer*,

and the jury finding him guilty, the recognizance is to be eſtreated,

chequer, to be levied to his majeſty's uſe; and that the ſaid perſon, the condition of whoſe recognizance ſhall be ſo adjudged to be broken and forfeited, ſhall, from and after ſuch adjudication, be utterly diſabled to ſell any ale, beer, cyder, perry, ſpirituous liquors or ſtrong waters, for the ſpace of three years; and any licence or licences, granted or to be granted to ſuch perſon during ſuch term, ſhall be void, and of none effect.

and he is diſabled from ſelling beer, &c. for three years.

VIII. "Provided, that the ſaid juſtices may at the requeſt of the proſecutor or party ſo complained of, or informed againſt, or either of his or her ſureties, if they ſhall ſee juſt, adjourn the hearing and trial of the ſaid complaint or information to the then next general or quarter ſeſſions of the peace, where the ſame ſhall be finally determined.

Juſtices may adjourn the trial to next ſeſſions.

IX. "And whereas many perſons preſume to ſell ale, beer, cyder, perry or other liquors, without ſuch licence as is required by law for ſelling the ſame; and it is difficult, by reaſon of many evaſions that are made uſe of, and by ſome defects in former laws, to convict ſuch offenders; Be it therefore enacted, that where any juſtice of the peace ſhall ſuſpect that any alehouſe-keeper, victualler or retailer, ſells ale, beer, cyder or perry, without ſuch licence, it ſhall and may be lawful for ſuch juſtice to call ſuch ſuſpected perſon before him, and alſo any exciſe officer or gauger, to produce before ſuch juſtice, his ſtock book, or other account which ſuch officer keeps, of the charge or ſurvey of ſuch ſuſpected perſon, in reſpect of any of the liquors aforeſaid; and likewiſe to examine ſuch exciſe officer or gauger upon oath, touching the manner in which ſuch officer ſurveys or charges ſuch ſuſpected perſon, in reſpect of any of the liquors aforeſaid, or how or in what manner ſuch ſuſpected perſon actually pays the duties for any of the ſaid liquors; and if it ſhall appear by ſuch ſtock book or other account, or by the examination of the ſaid officer or gauger, that ſuch perſon ſo ſuſpected of ſelling any of the liquors aforeſaid, is ſurveyed as a victualler or retailer, and is charged with the ſame duties that victuallers and retailers are uſually charged with, and pay for any of the liquors aforeſaid, and is not intitled to the allowance or abatement given to common brewers, then and in ſuch caſe ſuch ſuſpected perſon ſhall be deemed an alehouſe-keeper, victualler, retailer or ſeller of any of the liquors aforeſaid, to all intents and purpoſes, as if the ſame had been proved by two witneſſes.

Where a juſtice ſhall ſuſpect that any victualler ſells ale, &c. without licence, he may ſummon him, and the officer who ſurveys him,

and examine ſuch officer upon oath.

X. "And be it further enacted, that if any perſon ſhall make information before any one juſtice of the peace, and ſhew probable cauſe that he ſuſpects that any perſon ſells ale, beer or other liquors without a licence from two juſtices, it ſhall and may be lawful to and for ſuch juſtice to call ſuch ſuſpected perſon before him, and alſo to ſummon any other perſon or peſons as evidence, to prove the charge againſt ſuch ſuſpected perſon; and if ſuch perſon ſo ſummoned ſhall refuſe to appear, or when appearing, ſhall refuſe to be examined upon oath, and give evidence as aforeſaid, ſuch perſon or perſons ſhall forfeit the ſum of ten pounds, to be levied by diſtreſs and ſale of the goods and chattels of ſuch offender or offenders, by warrant under the hand and ſeal of ſuch juſtice, rendering to him or them the overplus, after charges of the ſaid diſtreſs and ſale deducted, to be

Juſtice upon information that any perſon is reaſonably ſuſpected of ſelling ale, &c. without licence, is to ſummon the party and evidence.

Perſons ſummoned not appearing, forfeit 10 l.

be paid to the overſeers for the uſe of the poor of the pariſh or place where ſuch perſon or perſons ſo offending ſhall live.

Perſons diſabled by conviction to ſell ale, &c. diſabled alſo from ſelling ſpirituous liquors, &c.

XI. "And be it further enacted, that if any perſon ſhall be diſabled by conviction to ſell ale, beer, cyder or perry, ſuch perſon ſhall by the ſame conviction be alſo diſabled to ſell any ſpirituous liquors or ſtrong waters, any licence before obtained for that purpoſe notwithſtanding; and every licence granted to the perſon ſo convicted, to ſell ale, beer, cyder, perry, ſpirituous liquors, ſtrong waters, or any of them, from the time of ſuch conviction ſhall be null and void; and every perſon ſelling ale, beer, cyder, perry, ſpirituous liquors, ſtrong waters, or any of them, during the term of ſuch diſability, ſhall be ſubject to all or ſuch of the penalties, as are reſpectively inflicted by law for ſelling ale, beer, cyder, perry, ſpirituous liquors, ſtrong waters, or any of them, by retail without a licence; and in all proſecutions of ſuch offenders, a certificate from the clerk of the peace (or perſon acting as ſuch) of any ſuch conviction, ſhall be legal evidence; which certificate ſuch clerk of the peace or perſon ſhall grant on demand without fee or reward.

Penalty of ſelling ale, &c. without a licence from two juſtices;

XII. And be it farther enacted, that every perſon ſo convicted of the offence of ſelling ale, beer, or other liquors, without a licence from two juſtices of the peace, ſhall for every ſuch firſt offence forfeit the ſum of forty ſhillings; and for every ſuch ſecond offence ſhall forfeit the ſum of four pounds; and for every ſuch third offence ſhall forfeit the ſum of ſix pounds;

to be levied by diſtreſs and ſale;

all which ſaid reſpective forfeitures ſhall and may be levied by diſtreſs and ſale of the goods and chattles of every ſuch offender (rendering to him the overplus, after charges of the ſaid diſtreſs and ſale deducted) by warrant under the hand and ſeal of the juſtice convicting ſuch offender; and ſhall

one moiety to the informer, and the other to the poor; for want of diſtreſs, the perſon to be committed.

be paid one moiety thereof to the informer, and the other moiety thereof to the overſeers of the poor, for the uſe of the poor of the pariſh or place where ſuch offence was committed; and if no ſufficient diſtreſs ſhall be found, whereon to levy the ſaid reſpective forfeitures, then the ſaid juſtice of the peace ſhall and may commit every ſuch offender ſo reſpectively convicted as aforeſaid, to the common gaol, or other priſon, or houſe of correction, within his juriſdiction, without bail or mainprize, for the ſpace of one month, for the firſt offence; and for the ſecond offence, for the ſpace of two months; and for the third offence, until ſuch offender ſhall be diſcharged by order of the court of general quarter ſeſſions. Explained by 28 *Geo.* 2. *c.* 19. *ſect.* 2. and altered by 5 *Geo.* 3. *c.* 46.

Conviction to be certified to the next quarter ſeſſions, and filed.

XIII. And that every conviction of any offender for ſelling ale, beer, or other liquors without ſuch licence, or after being diſabled to ſell, as aforeſaid, ſhall be certified by the juſtice of the peace making the ſame, to the next general or quarter ſeſſion of the peace, to be filed or entered amongſt the records of the ſaid ſeſſion; and that ſuch conviction ſhall and may be drawn up and certified in the following form of words, as the caſe ſhall happen, or in any other form of words to the ſame effect, *mutatis mutandis*, that is to ſay.

Middleſex. } A. B. *is convicted on his or her own confeſſion* (or, *on the oath of*) *of having ſold ale, beer, or other liquors, in the parish of in this county, on the Day of without being licenſed thereto according to law* (or, *after being diſabled to ſell*, as the caſe may be). *Given under my hand and ſeal this day of* Form of conviction.

And there ſhall be added, that the ſame is the firſt, ſecond or third conviction; which ſaid conviction, in the ſame or the like form of words, ſhall be good and effectual in law to all intents and purpoſes, and ſhall not be quaſhed, ſet aſide, or adjudged void or inſufficient, for want of any other form or words whatſoever.

XIV. Provided always, that ſuch offender who ſhall be puniſhed by virtue of this act, ſhall not be puniſhed again for the ſame offence by any former act; and that ſuch offender who ſhall be puniſhed by virtue of any former act, ſhall not be puniſhed again for the ſame offence, by virtue of this preſent act, or any thing herein contained. Offender not liable to double puniſhment for the ſame offence.

XV. Provided that this act, or any thing herein contained, ſhall not any wiſe be prejudicial to the privilege of licenſing taverns and other publick houſes, claimed by the two univerſities of that part of *Great Britain* called *England*, or either of them, nor to the chancellor, maſters and ſcholars, or any officers of the ſame, or their ſucceſſors, but that they may uſe and enjoy ſuch privilege as they have heretofore lawfully uſed and enjoyed; any thing herein contained to the contrary notwithſtanding. Rights of the univerſities to grant licences reſerved.

XVI. Provided always, that nothing herein contained ſhall extend or be conſtrued to extend to alter the time or times of granting licences for keeping of common inns or alehouſes, or to oblige perſons not licenſed the year preceding to produce certificates, in any city or town corporate. The times of granting licences for common inns, not altered, &c.

XVII. Provided always, that any perſon ſhall be deemed a competent witneſs, and be admitted to give evidence upon any information or complaint for any offence committed againſt this act, notwithſtanding ſuch perſon be an inhabitant of or charged or liable to be charged to the payment of any rates or aſſeſſments for the relief of the poor of any pariſh or place where ſuch offence ſhall be committed. Inhabitant of the pariſh deemed a competent witneſs.

Stat. 28 *Geo.* 2. *c.* 19. [*A. D.* 1755.] "Made, among other purpoſes, for the further puniſhing perſons ſelling ale or other liquors without licence." 28 Geo. 2. c. 19.

Sect. 2. And whereas doubts have ariſen upon the conſtruction of an act of parliament paſſed in the 26th year of the reign of his preſent majeſty, intituled, *An act for regulating the manner of licenſing alehouſes, in that part of* Great Britain *called* England, *and for the more eaſy convicting perſons ſelling ale and other liquors without licence*, whether a perſon having been convicted of three ſeveral offences in ſelling ale, beer or other liquors, without a licence from two juſtices of the peace, as by the ſaid act is directed, is liable to any puniſhment for any ſuch offence, of which he may be guilty after

offenders, after third conviction, to forfeit 6l. for every offence.

after ſuch third conviction; be it further enacted by the authority aforeſaid, that every perſon ſo ſelling without a licence as aforeſaid, after ſuch third conviction, ſhall, for every ſuch offence, ſo often as it ſhall happen, forfeit the ſum of ſix pounds, to be levied and diſpoſed of in like manner as the forfeitures on the firſt, ſecond and third conviction are directed to be, in and by the ſaid act; and in caſe no ſufficient diſtreſs ſhall be found whereon to levy the ſaid ſeveral forfeitures, then the juſtice of the peace, who ſhall have convicted ſuch offender, ſhall and may commit him or her ſo convicted to the common gaol, or other priſon or houſe of correction within his juriſdiction, without bail or mainprize, until ſuch offender ſhall be diſcharged by order of the court of general or quarter ſeſſions.

29 Geo. 2. c. 13.

Stat. 29 *Geo.* 2. *c.* 13. [*A. D.* 1756.] Made, among other purpoſes, "for granting to his majeſty a duty upon licences for retailing beer, ale, and other exciſeable liquors."

On death or removal of perſons occupying licenſed houſes, their aſſigns, &c. may continue the ſame for the reſidue of the year.

Sect. 23. "Provided nevertheleſs, and be it enacted by the authority aforeſaid, that if any perſon licenſed to ſell ale, beer, or other exciſeable liquors, ſhall die, or remove from the alehouſe or other place wherein ſuch ale, beer, or other liquors ſhall, by virtue of ſuch licence, be ſold, it ſhall and may be lawful for the executors, adminiſtrators and aſſigns of ſuch perſon ſo dying or removing, who ſhall be poſſeſſed of ſuch houſe or place, or the occupier thereof, to ſell ale, beer, or other liquors therein, during the reſidue of the term for which ſuch licence ſhall have been granted to the perſon ſo dying or removing, without any certificate from any juſtice of the peace, or any new licence to be had or obtained in that behalf; any thing in the act made in the 26th year of the reign of his preſent majeſty, or any other law to the contrary thereof in any wiſe nowithſtanding."

Sect. 24. "Provided always, and be it enacted, that in caſe any alehouſe or victualling-houſe, in that part of *Great Britain* called *England*, ſhall become empty or unoccupied after the general day appointed for licenſing (the occupier whereof was duly licenſed the year preceding) it ſhall be lawful for any two of his majeſty's juſtices of the peace, at a petty ſeſſions, to grant a licence to any new tenant or occupier, to open ſuch houſe as an alehouſe or victualling-houſe, and to ſell ale there, till the next general licenſing day, ſo as the ſaid licence be ſtamped as herein directed: ſuch new tenant or occupier obtaining ſuch certificate, as is directed and preſcribed in and by an act of parliament, made in the 26th year of his majeſty's reign, intituled, *An act for regulating the manner of licenſing alehouſes, in that part of* Great Britain *called* England; *and for the more eaſy convicting perſons ſelling ale and other liquors without licence.*

Stat. 5 Geo. 3. c. 46.

Stat. 5 *Geo.* 3. *c.* 46. [*A. D.* 1765.] made, among other purpoſes, "for further ſecuring and improving the ſtamp duties in *Great Britain.*"

Clauſe in act 29 Geo. 2.

Sect. 20. "And whereas by an act of parliament made in the twenty-ninth year of the reign of his late majeſty king *George* the ſecond, intituled, *An act for granting to his majeſty a duty upon licences for retailing beer, ale, and*

and other exciſeable liquors; *and for eſtabliſhing a method for granting ſuch licences in* Scotland; *and for allowing ſuch licences to be granted at a petty ſeſſions in* England, *in a certain caſe therein mentioned*; it is, amongſt other things, enacted, that from and after the feaſt of *Eaſter* one thouſand ſeven hundred and fifty-ſix, there ſhould be, throughout the kingdom of *Great Britain*, raiſed, levied, collected, and paid, to his ſaid then majeſty, his heirs, and ſucceſſors, for the purpoſes therein mentioned, a duty of twenty ſhillings for every piece of vellum, or parchment, or ſheet or piece of paper, on which ſhould be engroſſed, written, or printed, any licence for ſelling ale or beer, or other exciſeable liquors, by retail, over and above all other duties chargeable thereon: and whereas ſeveral proviſions are therein and thereby made, for the duly raiſing, levying, collecting and paying, the ſame duty: and whereas it is found, by experience, that the ſaid proviſions are not ſufficient for that purpoſe, in that part of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*; and that, by divers frauds and other ill practices, the crown has been, from time to time, defrauded of a great part of the ſaid duty, and it is rendered difficult to convict the offenders: for remedy whereof, and for the further and better ſecuring the raiſing, levying, collecting, and paying, of the ſaid duty for the future, and for preventing ſuch frauds and ill practices, and for rendering the conviction of the offenders more eaſy in that part of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*, Be it enacted by the authority aforeſaid, that from and after the ſaid fifth day of *July* one thouſand ſeven hundred and ſixty five, every victualler, or alehouſe keeper, and every perſon ſelling ale, or beer, or other exciſeable liquors, by retail; and every perſon permitting or ſuffering any ale, or beer, or any other exciſeable liquors, to be ſold by retail, in his, her, or their houſe, outhouſe, or yard, garden, orchard, or other place, in that part of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick upon Tweed*, do and ſhall, on demand to him or her made by any officer appointed by the commiſſioners for the time being to manage the duties charged on ſtamped vellum, parchment, and paper, produce and ſhew to ſuch officer or officers, ſo demanding the ſame, his or her licence to ſell ale, or beer, or other exciſeable liquors, by retail; and ſhall permit ſuch officer, at his own expence, to take and have a copy thereof on demand: and in caſe any ſuch victualler, or alehouſe keeper, or other perſon ſelling ale, or beer, or other exciſeable liquors by retail, or other perſon or perſons ſo permitting or ſuffering any ale, beer, or other exciſeable liquors, to be ſold by retail in his, her, or their houſe, or outhouſe, yard, garden, orchard, or other place as aforeſaid, ſhall refuſe or neglect ſo to do; then every ſuch victualler, or alehouſe keeper, or perſon ſelling ale, or beer, or other exciſeable liquors, by retail; or ſo permitting or ſuffering any ale, beer, or other exciſeable liquors, to be ſold by retail in his, her, or their houſe, or outhouſe, yard, garden, orchard, or other place as aforeſaid, ſhall, for every ſuch offence, forfeit the ſum of forty ſhillings.

Retailers of beer, and other exciſeable liquors, to exhibit, on demand, their licence to the officer appointed by the commiſſioners for ſtamps,

and to permit him to take a copy thereof;

on forfeiture of 40 s.

Sect. 21. "And be it further enacted by the authority aforeſaid, that for the better detecting of ſuch frauds and ill practices, and preventing the

Clerks of the peace, town clerks, and

common clerks, or their deputies, are to deliver, upon demand, to the officer of the ſtamp duties, liſts of the ſeveral perſons licenſed to retail beer or other exciſeable liquors,

the ſame for the future, every clerk of the peace of or for each county, riding, or diviſion, in each county in that part of *Great Britain* called *England*, and the dominion of *Wales*, and town of *Berwick upon Tweed*, or his deputy, or perſon acting as ſuch; and every clerk of the peace, or town clerk, or common clerk, or perſon acting as ſuch, of or for every city, town, and liberty, in that part of *Great Britain* called *England*, and the dominion of *Wales*, and the town of *Berwick upon Tweed*, where licences to ſell beer or ale, or other exciſeable liquors, are, purſuant to the ſaid act, to be granted by the juſtices or magiſtrates, of or for ſuch city, riding, diviſion, town, or liberty, and of the ſaid town of *Berwick upon Tweed*, or his deputy, or perſon acting as ſuch, do and ſhall, on demand to him made by any officer of the ſtamp duties for that purpoſe, or within the ſpace of three days next after ſuch demand ſhall be ſo made, deliver, or cauſe to be delivered, to ſuch officer a true liſt of the names and places of abode of all the victuallers, alehouſe keepers, and other perſons then licenſed to ſell ale or beer, or other exciſeable liquors, by retail, within every ſuch county, riding, diviſion, city, town, or liberty; and that on the delivery thereof, ſuch officer of the ſtamp duties ſhall pay to ſuch clerk of the peace, or his deputy, or perſon acting as ſuch, or to ſuch town clerk, or common clerk, or his deputy, or perſon acting as ſuch, for the making out and writing every ſuch liſt, after the rate of one farthing for every licenſed perſon whoſe name ſhall be therein inſerted; all which monies ſo paid ſhall, from time to time, be allowed to every ſuch officer of the ſtamp duties in his account; and in caſe any ſuch clerk of the peace, or his deputy, or perſon acting as ſuch, or any ſuch town clerk or common clerk, or his deputy, or perſon acting as ſuch, ſhall refuſe or neglect ſo to do by the ſpace of three days next after ſuch demand ſhall be ſo made, or ſhall not inſert in ſuch a liſt a full, true, and perfect account of the names and places of abode of all the perſons the ſame ought to contain; that then and in every ſuch caſe, every perſon ſo offending ſhall, for every ſuch offence, forfeit the ſum of five pounds.

he paying for ſuch copy 1 q. for each licenſed perſon inſerted in ſuch liſt.

If ſuch liſt ſhall be refuſed, or delayed, or be given in imperfect,

the offender forfeits 5 l.

Sect. 22. "And whereas by the laws now in force in that part of *Great Britain* called *England*, dominion of *Wales*, and town of *Berwick upon Tweed*, perſons ſelling ale or beer, or other exciſeable liquors, by retail, without licence, are liable and ſubject by different laws to different penalties and puniſhments, which has occaſioned much confuſion, and an ill and improper uſe has been made thereof in many inſtances: for the prevention whereof, be it further enacted by the authority aforeſaid, that from and after the fifth day of *July* one thouſand ſeven hundred and ſixty five, every perſon lawfully convicted of ſelling ale or beer, or other exciſeable liquors, by retail, after that day, in that part of *Great Britain* called *England*, the dominion of *Wales*, or the town of *Berwick upon Tweed*, without being duly licenſed ſo to do, ſhall for every ſuch offence, forfeit and undergo the ſeveral penalties and puniſhments herein after mentioned and provided in that behalf, inſtead and in lieu of the ſeveral pecuniary and corporal puniſhments which they are now liable or ſubject to by any law now in force; that is to ſay, for the firſt offence the ſum of forty ſhillings,

Inſtead of the pecuniary and corporal puniſhments inflicted by former acts, on retailers of beer, &c. not being duly licenſed, they are to forfeit, for the firſt offence,

ſhillings; and alſo the coſts and expences of convicting ſuch offender; and in caſe ſuch ſum, together with the charges and expences of convicting ſuch offender, ſhall not be paid within the ſpace of fourteen days next after ſuch conviction, that then the offender ſhall ſuffer impriſonment for the ſpace of one month, unleſs he or ſhe ſhall ſooner pay ſuch penalty, and the coſts, charges, and expences of ſuch conviction, and executing the ſame: and for the ſecond offence, the ſum of four pounds, and alſo the coſts and expences of convicting ſuch offender; and in caſe ſuch ſum, together with the charges and expences of convicting ſuch offender the ſecond time, ſhall not be paid within the ſpace of one week next after ſuch ſecond conviction, that then the offender ſhall ſuffer impriſonment for the ſpace of two months, unleſs he or ſhe ſhall ſooner pay ſuch penalty of four pounds, and the coſts, charges and expences of ſuch ſecond conviction, and executing the ſame: and for the third offence, the ſum of ſix pounds, and alſo the coſts and expences of convicting ſuch offender; and in caſe ſuch ſum of ſix pounds, together with the charges and expences of convicting ſuch offender the third time, ſhall not be paid within the ſpace of three days next after ſuch third conviction, that then the offender ſhall ſuffer impriſonment for the ſpace of three months, unleſs he or ſhe ſhall ſooner pay ſuch penalty of ſix pounds, and the coſts, charges, and expences of ſuch third conviction and executing the ſame: and the like penalty and puniſhment for every other offence after the third offence and conviction thereof, as for the ſaid third offence; all which ſaid coſts and expences ſhall be aſſeſſed, ſettled, and aſcertained by the juſtice or juſtices of the peace before whom ſuch offenders ſhall reſpectively be convicted; any law, ſtatute, or cuſtom, to the contrary thereof in any wiſe notwithſtanding: all which penalties and forfeitures ſhall go and be paid, the one moiety thereof to his majeſty, his heirs and ſucceſſors, and the other moiety thereof, and alſo all ſuch coſts, charges, and expences, to be aſſeſſed or aſcertained as aforeſaid, to the proſecutor or proſecutors of every ſuch offender or offenders.

40 s. and coſts of conviction; and, on non-payment, are to be committed for one month; for the ſecond offence 4 l. and coſts; and, on non-payment, to be committed for two months; for the third offence 6 l. and coſts, and, on non-payment, to be committed for 3 months; and the like penalty and puniſhment as the third, for every ſubſequent offence. The coſts are to be ſettled by the juſtices; and the penalties to be applied, one moiety to the crown, and the other moiety and coſts to the proſecutor.

Sect. 23. "And be it further enacted by the authority aforeſaid, that it ſhall and may be lawful to and for any one or more juſtice or juſtices of the peace, for the time being, of the county or place where any of the ſaid offences againſt this act, or the ſaid former act, ſhall be committed, to hear and determine the ſame offences in a ſummary way; which ſaid juſtice and juſtices of the peace are hereby authorized and required, upon any information exhibited, or complaint made, in that behalf, to or before him or them, to ſummon the party or parties accuſed, and alſo the witneſſes on either ſide (if they ſhall be required to ſummon any ſuch witneſſes); and upon the appearance, or contempt of the party or parties accuſed by not appearing, to proceed to examine and hear the matter in a ſummary way; and alſo to examine ſuch witneſſes on oath as ſhall be produced therein (which oath ſuch juſtice and juſtices reſpectively is or are hereby impowered to give and adminiſter), and to give his or their judgment thereon; and in caſe he or they ſhall convict the party or parties ſo accuſed or complained againſt, of the offence laid to his, her, or their

The juſtices are authorized to hear and determine the ſaid offences in a ſummary way.

charge, and ſuch party or parties ſhall refuſe or neglect to pay the penalty or penalties, for which he, ſhe, or they, ſtand convicted, within the time herein before mentioned for that purpoſe, together with the coſts of ſuch conviction or convictions, to be aſſeſſed, ſettled, and aſcertained, as aforeſaid; that then, and in every ſuch caſe, it ſhall and may be lawful for every ſuch juſtice and juſtices, and he and they, and each of them, is and are hereby authorized and required to iſſue his or their warrant or warrants under his or their hand and ſeal, or hands and ſeals, for the apprehending and committing to priſon every ſuch offender, for ſuch time, and in ſuch manner, as the nature of the offence ſhall require, according to the true intent and meaning of this act.

Witneſſes being duly ſummoned, neglecting or refuſing to appear (without reaſonable cauſe ſhewn) or to give evidence, forfeit 40 s.

Sect. 24. "And be it further enacted by the authority aforeſaid, that if any perſon or perſons ſhall be ſummoned as a witneſs or witneſſes to give evidence before any ſuch juſtice or juſtices of the peace, touching any of the matters aforeſaid, either on the part of the proſecutor, or of the perſon or perſons accuſed, and ſhall neglect or refuſe to appear at the time and place to be for that purpoſe appointed, without a reaſonable excuſe for ſuch his, her, or their neglect or refuſal, to be allowed of by ſuch juſtice or juſtices of the peace; or, appearing, ſhall refuſe to be examined on oath, and give evidence before ſuch juſtice or juſtices of the peace before whom the proſecution ſhall be depending; that then, every ſuch perſon ſhall forfeit, for every ſuch offence, the ſum of twenty ſhillings, to be levied and paid in ſuch manner, and by ſuch means, as are herein before directed as to other penalties.

Perſons aggrieved by the judgment or conviction of a juſtice, and giving ſecurity,

Sect. 25. "And be it further enacted, that if any perſon or perſons ſhall think himſelf, herſelf, or themſelves, aggrieved by the judgment or conviction of any juſtice or juſtices of the peace, for any of the offences aforeſaid, and ſhall give ſecurity to the ſatisfaction of ſuch juſtice or juſtices of the peace for the payment of the penalty, coſts, and expences, to be expreſſed in the warrant or warrants of diſtreſs on ſuch conviction; that then, and in every ſuch caſe, after ſuch ſecurity given, and not otherwiſe,

may appeal to the quarter ſeſſions,

it ſhall and may be lawful to and for ſuch offender and offenders to appeal from and againſt ſuch conviction or convictions, to the juſtices of the peace aſſembled at the next quarter ſeſſions of the peace to be held for ſuch county, riding, diviſion, liberty, city, town, or place, unleſs ſuch ſeſſions of the peace ſhall be held within ſix days or leſs next after ſuch conviction or convictions ſhall be ſo had or made; and in that caſe to the juſtices of the peace to be aſſembled at the next ſeſſions after ſuch ſeſſions, and not afterwards; and that the juſtices of peace aſſembled at ſuch ſeſſions, ſhall thereupon proceed to hear and determine the matter of every ſuch appeal, and their jugement thereon ſhall be final and concluſive to all intents and purpoſes whatſoever; and in caſe the juſtices of the peace ſo aſſembled at ſuch ſeſſions, ſhall find and adjudge any ſuch appeal to be frivolous or vexatious, it ſhall and may be lawful to and for them to give and adjudge to the party or parties grieved by ſuch appeal, his or their reaſonable coſts and charges occaſioned thereby, not exceeding in the whole the ſum of five pounds on any one appeal.

who are to hear and determine the matter finally; and if they adjudge the appeal to be frivolous, or vexatious, may award coſts, not exceeding 5l

Sect. 26.

Sect. 26. " And, in order to prevent frivolous and vexatious appeals, be it further enacted by the authority aforeſaid, that a conviction in the form or to the effect following, *Mutatis mutandis*, as the caſe ſhall happen to be, ſhall be good and effectual to all intents and purpoſes whatſoever, without ſtating the caſe, or the facts or evidence in any more particular manner (that is to ſay)

Form of conviction.

Middleſex ſſ. BE *it remembered, That on this day of in the year* A. B. *of*, &c. *was duly convicted before me* C. D. *one of his majeſty's juſtices of the peace for the county of* Middleſex, *or before us* C. D. *and* E. F. *two of his majeſty's juſtices of the peace for the ſaid county of* Middleſex (as the caſe ſhall happen to be) *for ſelling ale or beer, or other exciſeable liquors* (as the caſe ſhall happen to be) *without being duly licenſed ſo to do, according to the ſtatutes in ſuch caſe made and provided, whereby he, ſhe, or they, has or have forfeited the ſum of this being the firſt, ſecond, or third offence* (as the caſe ſhall happen to be) *beſides the coſts and expences of this conviction; which coſts and expences I the the ſaid juſtice of the peace, or we the ſaid juſtices of the peace* (as the caſe ſhall happen to be) *do hereby aſcertain and aſſeſs, at the ſum of purſuant to the ſtatute in ſuch caſe made and provided.*

Given under my hand and ſeal, or our hands and ſeals *(as the caſe ſhall happen to be)* the day and year above written.

Indictment that he kept a common alehouſe without licence *contra form' ſtatut'*; *non cul'* pleaded; verdict *pro rege.*

An indictment doth not lie for keeping an ale-houſe without licence.

In arreſt Sir *Barth. Shower* moved that no indictment lies, becauſe it is a new offence created by a particular ſtatute, and a particular method appointed for the conviction and puniſhing of it: at common law any man might keep an alehouſe, and might ſell beer or ale, out of, or in his houſe at pleaſure, and there was no law to reſtrain them; though as to inns, ſome opinions have been, that licences were neceſſary, as juſtice *Croke* and ſome others held, 1 *Bulſtr.* 109. contrary is *Godb.* 345. and 2 *Roll's Abr.* 84. That no indictment lies at common law for erecting an inn without a licence; it is true, they may be puniſhed as nuſances, if in inconvenient places. In the reſolution concerning inns in 19 *Junii* 22 *Jac.* 1. It is reſolved that any might erect an inn without any allowance or licence, and any man might keep an alehouſe before the ſtatute of *Edw.* 6. as at this day any man may ſet up hackney coaches for hire, or uſe any trade not prohibited by 5 *Eliz.*

1 Show. 398. Trin. 4 Will. and M. Rex v. Marriot.

Now where a particular method is preſcribed, that is to be purſued, and no other. By the 5 & 6 of *Edw.* 6. c. 25. [*See page* 12.] The juſtices have power to remove and put away the common ſelling of ale and beer in any ſuch places as they ſhall think fit, and none ſhall be admitted or ſuffered

ſuffered to ſell, but ſuch as ſhall be licenſed, *&c.* giving recogniſance. *Sect.* 4. If any perſon ſhall do it of his own authority, two juſtices ſhall commit for three days, and before deliverance the ſaid juſtices ſhall take recogniſance not to ſell again; then he is to make a certificate to the ſeſſions, which ſhall be a ſufficient conviction, and there they are to aſſeſs 20 *s.* fine. Now it is plain, this method can never be obſerved upon an indictment, and the makers of this law never intended ſuch a proſecution; here are no negative words, but only by way of prohibition to the juſtices not to ſuffer any without licence: the firſt gives them authority to remove and put away from ſuch places as they ſhall think fit; then it is ſaid none ſhall be ſuffered, which is a prohibition on the juſtices, not upon the party: Then the third ſection ſhews it plain, for there where order is taken about inquiry into the breach of the recogniſance for keeping a diſorderly houſe, there it is ſaid by preſentment or otherwiſe; now here in this clauſe is no ſuch thing.

Then for 3 *Car.* 1. *cap.* 3. [*See page* 23.] There it is to be on view by the mayor, juſtice, or head officer, on oath of two witneſſes before him, and the penalty to be levied by the conſtable upon warrant, and the words are only, if any perſon or perſons, *&c.* and no negative words at all.

In *Palmer's Rep.* 388. *per Juſtice Haughton*, a man cannot be indicted for keeping an alehouſe without licence, for the *Stat.* of *Edw.* 6. is that they ſhall be committed, and the juſtice ſhall therefore impriſon the party, and 2 *Roll's Rep.* 398. is the ſame.

Caſtle's caſe on 18 *Hen.* 6. *cap.* 11. in 2 *Cro.* 643. and 2 *Roll's Rep.* 247. is expreſs; Indictment for taking on him to be a juſtice of peace, not having lands to ſuch a value: and the ſame exception taken as here, becauſe a ſtatute appoints a penalty, which is to be recovered by bill, plaint or information, and therefore not by indictment, becauſe no offence before: and the court was all of opinion, that where a ſtatute inflicts a penalty for the doing of a thing that was no offence before, and appoints how it ſhall be recovered, it ſhall be puniſhed by that, and no other means, not by indictment, and that ſtatute is preciſely as this, that none ſhall be aſſigned, *&c.* It is one of the reſolutions upon the caſe of penal ſtatutes, 7 *Rep.* 36. That every *Act* which gives a new penalty, ought to be purſued ſtrictly, both in the proſecution and levying of it, according to the method preſcribed by the *Act*: and in *Plowd.* 206. *Stradling*'s caſe, it is allowed as a rule, when an *Act of parliament* gives power or intereſt to a particular perſon, that particular deſignation is excluſive of any other; the like caſe was here, *Paſch.* 2 *Jac.* 2. *B. R. Dom. Rex* againſt *Joice*, indictment for keeping an alehouſe without licence, and Sir *Henry Poll.* moved then, as I do now, to arreſt the judgment for theſe and the like reaſons, and the judgment was arreſted: beſides,

This is to inflict a greater penalty: for the charge of trying an indictment is more than the penalty; perhaps it may be more juſt and fair for trial, but the other leſs expenſive, and that may be the reaſon why this law doth not mention indictment.

Obj.

Obj. Crafton's caſe, *Mod. Rep.* 34. *Sid.* 439. *Nonconform*' reſiding in a corporation. But that was *Zachary Crafton*'s caſe, there it was to be by bill, *&c.* Here are clauſes that particularly ſeem to reſtrain it to this method, *viz.* committed till he give recogniſance, which the juſtice is to certify, which this court cannot execute.

. *Dominus Rex* againſt *Baker*, *Hill.* 24 *Car.* 2. *in* 3 *Keble* 106. ſeems to the contrary; but *Caſtle*'s caſe is as ſtrong an authority for me; and I know of no judgment ever had in this caſe, but that of *Joyce*; this hath been rarely practiſed, which ſhews the current opinion to have been againſt it. *Dominus Rex* againſt *Fawkner*, 2 *Keble* 506. was one, and *Saunders* took exception, becauſe not ſaid *cont' form' ſtatut'*, and quaſhed, but this quære could not happen there, becauſe the indictment was not upon this ſtatute. *C. J. Holt*, *cæteris conſentientibus*, Let it ſtay. *Eyres*: It cannot be maintained I doubt.

By the ſtat. of 4 & 5 *Will. & M.* Intituled, *An act for carrying on a war with France*, it was enacted, that conſtables ſhould quarter ſoldiers upon innkeepers, and ſuch as kept alehouſes and victualling-houſes, livery ſtables, or ſold brandy, metheglin or cyder by retail; and in an action brought by the plaintiff againſt a conſtable for quartering a horſe and dragoon upon him, he pleaded not guilty, being an officer, and gave the ſtatute in evidence: And the jury found, that there are wholeſome wells at *Epſom*, and that the plaintiff, during the ſeaſon for drinking the waters, indefinitely *demiſit conclavia*, anglicè, let lodgings, to ſuch as went thither to drink the waters, for the air, or for their pleaſure; and did dreſs victuals for them, and ſell them ale and beer, and entertained their horſes at 8*d. per diem*, but ſold no victuals, drink, &c. to any but the lodgers; and that plaintiff had no licence from any juſtice of peace to ſell ale, and that the defendant did billet a ſoldier and a horſe upon the plaintiff, who compelled him to find victuals for himſelf, and proviſion for his horſe, for the ſpace of two months.—Reſolved *per cur.* that the plaintiff's houſe was not a houſe within the deſcription of the ſtatute; for firſt it was no inn, for the verdict finds he let lodgings only, which ſhews him not compellable to entertain any body, and that none could come there without a previous contract; that he was not bound to ſell at reaſonable rates, or to protect his gueſts; but contrary it is in all the ſaid points in caſe of an innkeeper, and action ſhall lie againſt him for default, not by name of *innkeeper*, but of *common innkeeper*. Secondly, It is not an alehouſe or victualling houſe, for thoſe extend only to ſuch alehouſes and victualling houſes as are known and deſcribed by ſeveral acts of parliament, which it is a crime to keep without licence; and it muſt be a *communis taberna*, a *common inn*, where drink is *commonly* ſold to all the king's ſubjects. 3dly, It was reſolved to be a ſtatute againſt the liberty of the ſubject; for before it no man was obliged to entertain ſoldiers againſt his will, as appears by the petition of right, 3 *Car.* 1. and the ſtat. 21 *Car.* 2. and therefore not to be conſtrued favourably without great neceſſity. 4thly, That in this caſe, the conſtable having wrongfully quartered a dragoon upon him, he was anſwerable for all the dragoon had committed. Note; in this caſe *Holt* held

A houſe for boarders and lodgers, for themſelves and horſes, is not an inn nor alehouſe. 12 Mod. 254. Mich. 10 Will. 3. B. R. Parker v. Flint.

held, that if one comes to an inn, and makes a previous contract for lodging for a ſet time, and does not eat or drink there, he is no gueſt, but a lodger; and as ſuch is not under the innkeeper's protection; but if he eats and drinks there, it is otherwiſe; or if he pays for his diet there, though he does not take it there. And a ſign is not eſſential to an inn, but is an evidence of it.

The juſtices in ſeſſions have a diſcretionary power of ſuppreſſing alehouſes, without ſhewing any cauſe or miſdemeanor. 2 Lord Raym 1303. Mich. 8. Ann. Regina v. Harris.

At the quarter ſeſſions holden at *Guilford* the 12th day of *July* the 8th year of the preſent queen, the juſtices grant a licence to *George Harris* for keeping a common alehouſe; and at the next ſeſſions, *viz.* the 4th day of *October* following, they made this order: "Whereas it appears to this court, that *George Harris*, of *Walton* upon *Thames*, &c. doth keep a lewd and diſorderly houſe, it is therefore ordered by this court, that the ſaid *George Harris* be, and he is hereby ſuppreſſed from keeping an alehouſe, &c. after ſix weeks time from the firſt day of the preſent ſeſſions, &c." And this order being removed into the *King's bench* by *certiorari*, Mr. *Raymond* moved to quaſh it, becauſe by the 5 & 6 *Edw.* 6. *c.* 25. [*See page* 12.] there muſt be a previous conviction, and that by the oath of two men, before the juſtices can hinder his ſelling of ale, &c. for by the ſtatute, every man who has a licence to ſell ale, is to be bound in recognizance with ſurety, to keep good orders, &c. and that is to be certified at the next quarter ſeſſions, and they are to enquire whether any ſuch perſons bound in ſuch recognizances, have done any act, whereby they have forfeited the ſame; and if they have, to award proceſs to ſhew why they ſhould not forfeit it. But *per curiam* this order was confirmed, *Holt* chief juſtice being abſent; and by *Powell* juſtice, The juſtices in ſeſſions have a power by this act to ſuppreſs alehouſes, and need not proceed by information or conviction, but they have thereby a diſcretionary power given them to ſuppreſs them without ſhewing any cauſe or miſdemeanour: And where the act ſpeaks of a conviction, that is only intended when the juſtices proceed for the penalty, which ought to be by *ſcire facias.*

Juſtices may take away a licence without conviction upon the recogniſance.

Mandamus lies not to grant a licence to keep an alehouſe. Stran. 881. Mich. 4 Geo 2. John Giles's caſe.

Mr *Reeve* moved for a *Mandamus* to the juſtices of the city of *Worceſter*, to grant a licence to *Giles*, to keep an alhouſe; inſiſting that it being within a city, the 2 *Geo.* 2. *c.* 28. [*See page* 25.] did not extend to it. *Strange contra* inſiſted, that it was diſcretionary in the juſtices, and cited *Salk.* 45. that no appeal lies from the denial of a licence; and if the owner be committed, [*upon the ſtat.* 5 & 6 *Edw.* 6.] the want of a licence can only come in queſtion, and not the reaſon why it was denied. And *per curiam*, there never was an inſtance of ſuch a *Mandamus*; and therefore we will not grant it.

Information was denied againſt juſtices of peace, for refuſing to grant a licence under 26 Geo.

A motion was made on 10th of *May* 1757, for an information againſt theſe two juſtices of the peace, for arbitrarily, obſtinately, and unreaſonably refuſing to grant a licence to one *Henry Day*, to keep an inn at the Roſe and Crown in *Everſly*, *Wilts*, where it was alleged and ſworn to be fit and proper, and even neceſſary that there ſhould be an additional one, there being one there already; and for which occupation of keeping an inn, this man was (as theſe two juſtices themſelves had allowed on a former

former occaſion) a proper perſon, they having before licenſed him to do ſo at another place. Upon this original motion being made at the bar, Lord *Mansfield* and Mr. juſtice *Deniſon* held, that notwithſtanding this was a matter left in a great meaſure to the diſcretion of the juſtices, yet if it appeared to the court, from ſufficient circumſtances laid before them, that their conduct was influenced by *partial*, *corrupt*, or *arbitrary* views, inſtead of exerciſing a fair and candid diſcretion, the court might call upon them to ſhew the reaſons whereby they guided their diſcretion. And therefore they were for granting the rule to ſhew cauſe as prayed; but Mr. juſtice *Foſter*, who happened to know the place, and ſaid there was another houſe of good entertainment there already, thought it ſufficient to make a rule upon the two juſtices, to ſhew cauſe why they ſhould not grant this licence. And Lord *Mansfield* and Mr. juſtice *Deniſon* concurred with him to expreſs the rule in that manner, though the ſubſtance was the ſame: becauſe if they did not ſhew ſufficient cauſe, the conſequence muſt be granting an information. *Per cur.* unanimouſly (Mr. juſtice *Wilmot* being abſent in *Chancery*) a rule was made upon theſe two juſtices to ſhew cauſe why they did not grant this licence to *Henry Day*. On *Monday* 27th of *June* 1757, upon ſhewing cauſe, the juſtices in their affidavits made no *perſonal* objections to *Day*, but thought the certificate inſufficient, becauſe not ſigned by the parſon, vicar, or curate. The court was of opinion, that the certificate, being ſigned by three or four reputable and ſubſtantial houſekeepers, *&c.* was ſufficient. [*See p.* 27. *ſ.* 2.] But though the juſtices had miſtaken the act, the court cleared them from any wrong motive. But it being ſuggeſted, that the preſent parſon and churchwardens were ready to ſign a certificate in his favour, the court enlarged the rule to the firſt day of next term, with a view that he might be licenſed at *Michaelmas*, if there ſhould be no other objection than what aroſe from the certificate's not being ſigned by the parſon and churchwardens; and that the matter (which ſeemed to have raiſed great heats, and was ſtrongly ſupported by Sir *John Aſtley*, on the part of *Day*) might be accommodated. The rule was accordingly enlarged in theſe terms, *viz.* that the firſt day of the next term be farther given them, to ſhew cauſe why they have not granted, &c.

2. c. 31. becauſe the juſtices of the diviſion have the ſole diſcretion, without appeal, and they acted with purity of intention; but if they exerciſe this abſolute diſcretion with partiality, malice or corruption, an information ſhall be granted. 1 Bur. Rep. 556, 564. Eaſt. 31 Geo. 2. Rex v. Young and Pitts, eſquires.

On *Friday* 18th of *November* 1757, Mr. *Norton* again moved (and moved it as a new original motion) for an information againſt theſe two juſtices of peace; who, he ſaid, had at their laſt general *September* meeting for granting licences, ſtill perſiſted in refuſing to grant this licence, notwithſtanding what had already paſſed in this court upon the ſame ſubject and occaſion. Of this fact he had affidavits; and he alſo produced freſh and circumſtantial affidavits, as to the merits, viz. the neceſſity of ſuch a licence, and the conduct of the juſtices in their oppoſition to it. Lord *Mansfield*: What paſſed before was, that the court did not think any thing *criminally* imputable to theſe juſtices. The court *then* gave no opinion as to obliging them to grant the licence; but on the contrary, expreſly adjourned the conſideration of the reaſons of their refuſal. This former rule was only kept on foot, in order to obtain the *material* end of it; but as to the behaviour of the juſtices, with regard to the criminal complaint againſt

them, the court diſcharged them from any imputation of crime or arbitrary intention to oppreſs the man. — The court therefore now made the like rule, upon theſe freſh affidavits, as they had made upon the former, and ordered that both rules ſhould come on together.

Sir *Richard Loyd*, on *Saturday* 11th of *February* 1758, accordingly ſhewed cauſe upon both rules. He obſerved that it was a ſort of rule never before granted; and which he had known refuſed 25 years ago. He ſaid he never knew a rule made upon juſtices, to ſhew cauſe, why they did not grant a licence, or to enforce them to do ſo, unleſs there was ſome charge of corruption, partiality, bias, or other imputation upon the juſtices.

Lord *Mansfield* anſwered, that the affidavits upon which the original motion was made did import ſuch a charge; and the motion was originally made upon that foot. And that the rule was put into its preſent form, out of tenderneſs to theſe gentlemen, and regard to the fairneſs of their character. And they did indeed, upon the former cauſe ſhewn, appear to be free from blame, as to any criminal imputation. But yet, if they have no reaſonable objection to the man, they ought to licenſe him, and if they have any reaſon, they ought to give it. For though they have, it is true, a *diſcretion* in theſe caſes, yet it muſt not be permitted to them to exerciſe an arbitrary and uncontrolled power over the rights of other people, and in caſes where their livelihoods are ſo eſſentially concerned.

Sir *Richard Lloyd* argued and inſiſted, that the legiſlature has made them the *ſole* judges, as being ſuch who, from their reſidence on the ſpot, muſt *beſt* know the perſons and their characters, and alſo the circumſtances of time and place. And the legiſlature has even excluded juſtices of peace of *other* diviſions. And the juſtices thus intruſted have a right to judge for themſelves, and no man can judge for another. And this power is truſted to them by the conſtitution, by the legiſlature. It may be very dangerous to them, to be obliged to give their reaſons *publickly*, though they may have very ſufficient ones to ſatisfy their own minds, and to direct their own judgment. And if they are thus intruſted, why are they liable to be called to an account by any *other* juriſdiction, unleſs, they act faultily and wilfully wrong? Indeed, if they do *wilfully* wrong, let them be puniſhed; but when they act quite conſcientiouſly, they are not accountable to any body. Now theſe gentlemen ſay, and they ſwear too, that they really judge this houſe to be an *improper* houſe, and this perſon to be an *improper* perſon; and that this is their real and ſincere opinion. This queſtion affects all the juſtices in the kingdom; I mean, ſetting aſide the imputation of wilful miſbehaviour.

Lord *Mansfield:* Moſt certainly. No body doubts of the thing, ſetting aſide every degree of imputation: It will not bear an argument.

Sir *Richard* repeated the juſtices reaſons for their refuſal; and concluded with inſiſting on their right to judge for themſelves.

Mr *Young* being in court ſpoke very handſomely in exculpation of himſelf from any ill intention; and declared very ſolemnly, that he had acted according to his real ſentiments, and the beſt of his judgment.

Lord

Lord *Mansfield*— It is a matter of too much conſequence, and too great length, as I am obliged to go away, to be determined now immediately: and it may as well ſtand over till next term, as ſo little time of this term is left. Adjourned.

On *Thurſday* 13th of *April* 1758, this caſe being mentioned again, Lord *Mansfield* propoſed altering the rule, by making it, to ſhew cauſe why there ſhould not be an information againſt them; for ſo, he ſaid, it was originally moved, and this was the true and proper foot to argue it upon; and Mr. *Norton* declared that he propoſed to argue it upon that foot; though in tenderneſs to the juſtices, and leſt the country ſhould run away with a notion of their being under a criminal charge, it had been put into the form that it at prefent ſtands in. And Mr. *Nares*, counſel for the two juſtices, not oppoſing or objecting to this alteration, the rule was altered accordingly. And now this affair coming on again for the laſt time, Lord *Mansfield* again declared, that the argument ought to be taken up upon the foot of *criminality* in the juſtices, for it was ſo *originally* moved; it was the proper nature of the queſtion; it was ſo underſtood by every body, and ſo meant by the court. For, as he again explicitly declared, there was no pretence upon any other foot, to make a rule upon the juſtices, who have a diſcretionary juriſdiction given them by the law. But though *diſcretion* does mean, and can mean nothing elſe but exerciſing the beſt of their judgment upon the occaſion that calls for it; yet if this diſcretion be wilfully *abuſed*, it is *criminal*, and ought to be under the control of this court.

Mr. *Nares* and Mr. *Thurlow* for the defendants thereupon argued ſtrongly and very largely, that the juſtices had been ſo far from acting *criminally*, that they had acted rightly, properly and honeſtly: And they hinted that the court had already exculpated them from any criminality of behaviour. And the Legiſlature have left this juriſdiction ſo abſolutely to the juſtices of the particular diviſion, that no appeal will lie from their determination, as appears by 1 *Salk.* 45; which is expreſsly ſo, and is cited in 2 *Stran.* 881, as a proof of this poſition. Neither will any *Mandamus* lie to the juſtices, to oblige them to grant the licence, even though they ſhould appear to have refuſed it upon reaſons which may be looked upon as very ſuſpicious at leaſt, if not very improper. 2 *Stran.* 881. Nor will the court grant an information, for refuſing to grant a licence. *Rex* v. juſtices of *Nottingham*, where, they ſaid, an information was denied. But *per Cur.* that caſe was an *abuſe*, a groſs abuſe of their diſcretion. And the information was therefore granted, And ſo it was in the caſe of *Bridgewater*, upon the ſame foot of abuſe of the diſcretion intruſted to them.—The counſel for the two juſtices next obſerved, that *Day*'s having for many years had a licence to keep a public houſe in another pariſh, was quite an immaterial circumſtance; for by 26 *Geo.* 2. *c.* 31. *ſect.* 3. Such licence was abſolutely null and void, with regard to all other places. [*See page* 27.] The affidavits on both ſides being then all diſtinctly read, it appeared upon the whole matter, that theſe two juſtices had acted in this affair, with fairneſs, impartiality, candor, and

juſtice; that they really and ſincerely thought both the man and the houſe improper to be licenſed; and they had very good and ſufficient reaſons for ſo thinking and determining. Whereupon their counſel concluded with praying that the rules made upon them might be diſcharged with *full* coſts.—— The main tendency of the arguments of the counſel in ſupport of theſe rules was, to ſhew that the refuſal to grant this licence to *Day*, aroſe from partiality to Mr. *Barker* the lord of the manor, who was the proprietor (the landlord) of the *other* publick houſe already eſtabliſhed in the pariſh.

Lord *Mansfield* once more declared, that this court had no power or claim, to review the reaſons of juſtices of peace, upon which they form their judgments in granting licences, by way of appeal from their judgments, or over-ruling the diſcretion intruſted to them. But if it clearly appears, that the juſtices have been *partially*, *maliciouſly*, or *corruptly* influenced in the exerciſe of this diſcretion, and have conſequently abuſed the truſt repoſed in them, they are liable to proſecution by indictment or information, or even poſſibly by action, if the malice be very groſs and injurious. If their judgment is wrong, yet their heart and intention pure, God forbid that they ſhould be puniſhed. And he declared that he ſhould always lean towards favouring them, unleſs partiality, corruption, or malice ſhall *clearly* appear.——The preſent queſtion therefore only is, whether theſe gentlemen have been guilty of any *partiality* or *malice*, (for corruption is not pretended) in the refuſal of this licence.——Then he went minutely and accurately through all the particulars both of the charge and of the defence. And he thought that upon the firſt and original motion, the juſtices appeared to have been miſtaken in the grounds of their refuſal, in that they fixed it upon the want of the miniſter's and churchwardens ſigning; which they judged to be requiſite by the 26 *Geo.* 2. *c.* 31. when it was not. However, in this, they were not *criminal*, though they were *miſtaken*. And at *that* time, they had no perſonal objection to *Day*. And therefore it was, from all that *then* appeared, reaſonable to expect that, upon enlarging the rule, they would at their next meeting grant the licence; which they had before refuſed, upon a miſtake, of which they were ſubſequently informed. But ſince this, and antecedent to ſuch next meeting, there are come out ſeveral ſtrong *perſonal* objections to *Day* himſelf, which theſe juſtices were the proper judges of; namely, his keeping and having long kept a houſe for publickly retailing ale, wine and ſpirituous liquors, without being licenſed thereto; his having been twice convicted of ſelling ſpirituous liquors, without a licence; his ſuffering a day-labourer to drink a whole day in his houſe, in harveſt-time, and afterwards vindicating it; his having been charged with a fraud upon oath; beſides an allegation in one of the affidavits, that two notorious highwaymen and robbers appeared at leaſt to have uſed his houſe as a public houſe, if they enjoyed no other and more particular kind of harbour and protection in it. And in reſpect to the houſe, the juſtices now ſwear that they are clearly of opinion, that one is ſufficient. And they likewiſe clear themſelves, by the moſt ſolemn aſſertions in their affidavits,

of

of all *criminal* imputation. Therefore he concluded with declaring it as his opinion, that there was no ſufficient foundation for a criminal charge againſt theſe juſtices.——Mr. juſtice *Deniſon* concurred. He alſo expreſly allowed the diſcretionary power of the juſtices in granting licences, without appeal from their judgments, or having their juſt and honeſt reaſons reviewed by any body. But yet an improper and unjuſt exerciſe of their diſcretion, he ſaid, ought to be under controul. But it muſt be a clear and apparent partiality, or wilful miſbehaviour, to induce the court to grant an information; not a mere error in judgment. And here is certainly no clear and apparent partiality, or wilful miſbehaviour, in theſe juſtices. Therefore the rules ought to be diſcharged.

Mr. juſtice *Foſter* concurred in the general principle, before laid down; and he thought there was no evidence of partiality, malice or corruption, in the preſent caſe. He declared againſt increaſing the number of public houſes, and gave ſeveral ſtrong reaſons againſt it; and therefore he thought the juſtices far from being to blame, in having come to a reſolution *not* to increaſe them. And he was ſatisfied that the juſtices had reaſon ſufficient to refuſe this particular licence; both with regard to the houſe, and alſo with regard to the man refuſed.—Mr. juſtice *Wilmot* concurred. He was very explicit, that the ſole diſcretion of granting licences is in the juſtices of the diviſion; and he moreover gave various reaſons why it ſhould be ſo. And this point, he obſerved, was admitted at the bar. Then the ſole diſcretion being in them, the rule is invariable, that this court will never interpoſe to puniſh a juſtice of peace for a mere error in judgment. Therefore, even ſuppoſing them to have been miſtaken from beginning to the end, yet there is no ground from any of the affidavits, to infer any *partiality*, *malice*, or *corruption:* There is not the leaſt *fact*, whereupon ſufficiently to found any ſuch apprehenſion and belief even in the complainants: And the juſtices themſelves do moſt ſolemnly deny it in their affidavits. *Per cur.* Both rules diſcharged with coſts.—Lord *Mansfield*—There are two diſtinct reaſons why we ſhould give coſts; one with regard to the perſon complaining; the other, with regard to the perſons complained of. For it appears, upon the affidavits, that *Day* the perſon complaining has perſevered in keeping this houſe without a licence; and it now appears that the juſtices who are complained of, have acted both honeſtly and legally in refuſing to grant it, in a place where there was already a ſufficiency.

Information againſt a juſtice of peace, upon a charge of his refuſing to grant a licence to ſell ale, unleſs the man would firſt pay him a collateral and diſputed debt, and then convicting him of ſelling.

On ſhewing cauſe why a rule ſhould not be made abſolute, for an information againſt a juſtice of peace for a miſdemeanour in refuſing to grant a licence to one *Francis Simes*, (who had been licenſed for ſeveral preceding years) to ſell ale, as uſual; and afterwards convicting him, without any previous ſummons, for having ſold it without a licence; it appeared that the pretended grounds, upon which this rule had been applied for and obtained, were either falſe or fallacious. The firſt was, that the only reaſon why the licence was refuſed him, was his declining to pay a ſum of money (5 *l.*) which was claimed of him upon a diſtinct and collateral account, and which he denied to be due from him: the payment of which ſum of money was, as he alleged, inſiſted upon by the juſtice, as a condition

ale unlicenſed, without any previous ſummons, was denied upon the merits; but the juſtices have no authority to annex ſuch conditions; and the complainant ought to allege his own innocence, to intitle him to make this application againſt the juſtice. 2 Bur. Rep. 653. Mich. 32 Geo. 2. B. R. Rex v. Athay, eſq.

condition precedent to his granting the man a licence. The ſecond pretended ground of the motion was, that the juſtice had convicted him of the offence, without any previous ſummons. As to the firſt, the court were unanimous that the allegation appeared to be falſe in fact; but at the ſame time they declared explicitly, that juſtices of peace have no ſort of authority to annex any ſuch condition to the grant of their licences. As to the ſecond, they eſteemed it to be fallacious, as the fact came out upon ſhewing cauſe; for the man was actually preſent before the juſtice (who had ſent for him;) and was ſo far from offering to make any defence, that he rather ſeemed to apply for mercy; declaring, however, that if the juſtice did convict him, he would not pay the penalty. Thirdly, the court obſerved that the man had not any where alleged, that he was innocent of the offence, which they thought it incumbent upon him to have done, to intitle himſelf to make this application againſt the juſtice of peace. Rule diſcharged.

For other matters, ſee **Brewers, Coopers, Exciſe, Fees, Inns and Innkeepers, Meaſures, Plate, Soldiers, Stamps, Wine.**

Annuities.

AN annuity is a yearly payment of a certain ſum of money granted to another in fee-ſimple, fee-tail, for life or years, charging the perſon of the grantor only; if payable out of lands, it is properly called a rent-charge; but if both the perſon and eſtate be made liable, as they moſt commonly are, then it is generally called an annuity. *Co. Lit.* 144. *b. Finch* 161. 1 *Rol. Abr.* 226. *Doct. & Stud. Dial.* 2. *c.* 30.

4 Will. & M. c. 3.

Stat. 4 *Will. & Mar.* [*A. D.* 1692.] *c.* 3. *ſect.* 8. "In order to raiſe the ſum of one million towards carrying on the war againſt *France*, any perſons may contribute towards advancing the ſaid ſum at any time before 1 *May* 1693; for which the contributors are to have 10 *per cent.* till 24 *June* 1700, and then 7 *per cent.* during the lives of the perſons named by ſuch contributors; and upon the death of every nominee, the ſhare payable during his life, ſhall be divided among the contributors whoſe nominees ſhall be living; and ſo from time to time the whole funds ſhall be divided among the contributors whoſe nominees ſurvive, till there be but ſeven nominees living; and then upon the death of each of the ſaid ſeven nominees, a ſeventh part of the ſaid yearly funds ſhall be anſwered to their majeſties, their heirs and ſucceſſors." And by *ſect.* 22. of this act, if the whole ſum of one million be not advanced before the ſaid 1ſt of *May*, any perſons after that day, and before the 29th of *September* following, may advance any ſums not exceeding in the whole, with what ſhall have been

advanced before the ſaid 1ſt of *May*, the ſum of one million upon the terms following, *viz.* that every ſuch perſon ſhall have for every 100*l.* a yearly annuity of 14*l.* for his own or any other life to be by him nominated, payable half-yearly.

And by *ſect.* 12. "Contributors, upon demanding their half-yearly payments, unleſs the nominee appear in perſon, ſhall produce a certificate of his life, ſigned by the miniſter and churchwardens of the pariſh where he lives, on the day when the ſaid half-yearly payment becomes due, if ſuch nominee be within the realm; which certificate ſhall be made without fee, and filed in the office of receipt."

Stat. 5 *Will. & Mar. c.* 5. [*A. D.* 1693.] *ſect.* 1, 2. "To ſupply the deficiency of the money intended to be raiſed by the preceding act, any perſons may contribute towards advancing the ſum of 118,506*l.* 5*s.* 10*d.* to make up the ſum of one million intended to be advanced by the ſaid act, upon the terms following, *viz.* Every perſon ſhall have for every 100*l.* by them advanced, an annuity of 14*l.* during the life of ſuch perſon, or during any other life, to be nominated by him within ſix days after payment; which annuities ſhall be paid at the four uſual feaſts. 5 Will. & M. c. 5.

Sect. 4. "And to make the payment of the annuities more eaſy to the ſeveral contributors upon this and the ſaid act of 4 *Will. & Mar. c.* 3. both upon the terms of ſurvivorſhip, and the annuity of 14*l. per centum*; Be it enacted, that every contributor upon this or the former act, his, or her executors, adminiſtrators, or aſſigns, upon their demanding any half-yearly or quarterly payment of his, her, or their reſpective ſhares of either of the ſaid funds (unleſs the nominee appears in perſon at the ſaid receipt) ſhall produce a certificate of the life of his, her, or their reſpective nominee, ſigned by the miniſter and churchwardens of the pariſh where ſuch nominee ſhall be then living, as by the ſaid act is appointed; or otherwiſe it ſhall and may be lawful to and for every contributor, his or her executors, adminiſtrators or aſſigns, at his, her, or their election, to make oath of the truth of his, her, or their reſpective nominee's life, upon the day when the ſaid payments ſhall become due, before any one or more juſtices of the peace of the reſpective county, riding, city, town, or place wherein ſuch perſon at the time of making the ſaid oath ſhall reſide (which oath he or they are impowered to adminiſter); and the ſaid juſtice or juſtices ſhall make a certificate thereof, for which oath and certificate no fee or reward ſhall be required; and the ſaid certificate ſhall be filed in the ſaid office of receipt of the *Exchequer*. And if any perſon ſhall be guilty of a falſe oath, or forging any certificate, touching the premiſſes, and be thereof lawfully convicted, he ſhall incur the pains and penalties to be inflicted upon perſons who commit wilful perjury or forgery." Certificate of nominee's life. Penalty on perjury, and forging of certificate.

Stat. 2 & 3 *Ann.* [*A. D.* 1703.] *c.* 3. *ſect.* 9. "For raiſing 1,018,867*l.* 18*s.* 6*d.* for carrying on the war, and other her majeſty's occaſions, any perſons may pay money into the *Exchequer* for purchaſing annuities for 99 years, from the 25th of *March* 1704, at the rate of 150*l.* for 10*l. per an.*" Stat. 2 & 3 Ann. c. 3.

And

And by *ſect.* 10. of ſaid act, "Any perſons, for raiſing a farther ſum of 300,000*l.* for carrying on the war, and other her majeſty's occaſions, may pay money into the *Exchequer* for purchaſing any annuity for one life, at the rate of 9 years purchaſe; for two lives at eleven years; and three lives at twelve years purchaſe; or for the term of 99 years at 15 years purchaſe.

Contributors to produce a certificate of the life of nominees, &c. ſigned by the miniſter and churchwardens without fee; otherwiſe to make oath of nominee's life.

Sect. 23. "And to the intent and purpoſe, that all deceits in receiving any payment upon any of the ſaid annuities to be purchaſed for life or lives as aforeſaid, may be prevented; Be it enacted by the authority aforeſaid, that every contributor for any of the ſaid annuities for life or lives, his or her executors, adminiſtrators or aſſigns, upon his or her demanding of any quarterly payment, upon ſuch his or her annuity (unleſs the nominee appear in perſon at the ſaid receipt) ſhall produce a certificate of the life of his or her reſpective nominee, ſigned by the miniſter and churchwardens of the pariſh where ſuch nominee ſhall be then living, upon the day when the ſaid quarterly payment ſhall become due (if ſuch nominee ſhall be then reſiding in the kingdom of *England*, dominion of *Wales*, or town of *Berwick upon Tweed*,) which certificate the ſaid miniſter and churchwardens are hereby required to make without fee or reward; or otherwiſe it ſhall and may be lawful to and for every contributor, his or her executors, adminiſtrators and aſſigns, at his, her or their election, to make oath of the truth of his, her or their reſpective nominee's life, upon the day when the ſaid payment ſhall become due, before any one or more juſtices of the peace of the reſpective county, riding, city, town, or place, wherein ſuch perſon, at the time of making the ſaid oath, ſhall reſide; which oath he or they are hereby impowered to adminiſter: And the ſaid juſtice or juſtices ſhall make certificate thereof, for which oath and certificate no fee or reward ſhall be received; and the ſaid certificates ſhall be filed in the ſaid office of the receipt of *Exchequer:* And if any perſon ſhall be guilty of a falſe oath, or forging any certificate, touching the premiſſes, and be thereof lawfully convicted, he or ſhe ſhall incur the puniſhment to be inflicted upon perſons who commit wilful and corrupt perjury."

Juſtices to make a certificate thereof, &c.

Penalty on perſon guilty of a falſe oath, or forging certificate, &c.

4 An. c. 6. **Stat.** 4 *Ann. c.* 6. [*A. D.* 1705.] *ſect.* 25. "For raiſing 2,855,761*l.* 16*s.* 2*d.* for carrying on the war, and other her majeſty's preſent occaſions, any perſons may contribute for purchaſing annuities for 99 years from 25th *March* 1706, at the rate of 15½ years purchaſe, amounting to 155*l.* for 10*l. per ann.* payable at the four moſt uſual feaſts."

Annuities aſſignable,

Sect. 28. "And be it further enacted, that it ſhall and may be lawful to and for any contributor or contributors, his, her, or their executors, adminiſtrators or aſſigns, at any time or times, during the continuance of his, her, or their term, eſtate or intereſt of and in any annuity to be purchaſed upon this act, by any writing under hand and ſeal, or by his or her laſt will in writing, to aſſign or deviſe ſuch annuity, or any part thereof, or any intereſt therein, to any perſon or perſons whatſoever, and ſo *toties quoties*, and no ſuch aſſignment to be revocable, ſo as an entry or memorandum

and entry to be made, &c.

randum of ſuch aſſignment or will be made, in books to be kept for that purpoſe in the ſaid office of the auditor of the receipt, within the ſpace of three months after ſuch aſſignment or death of the deviſor, and that upon producing ſuch aſſignment or will, or probat thereof in the ſaid office of receipt, to be entred, as aforeſaid, the party ſo producing the ſame, ſhall bring therewith an affidavit taken before one or more of her majeſty's juſtices of the peace of the due execution of the ſaid aſſignment or will; which affidavit ſhall be ſeverally filed in the ſaid office, which ſaid entry or memorandum, the proper officers in the ſaid receipt of *Exchequer*, are hereby required to make accordingly, and to file the ſaid affidavits; and in default of ſuch aſſignment or deviſe by deed or will, the intereſt of ſuch contributor ſhall go to his or her executors or adminiſtrators."

Affidavits to be filed.

In default of deviſe, intereſt to go to executors, &c.

Stat. 5 *Ann. c.* 19. [*A. D.* 1706.] *ſect.* 15. "Natives or foreigners may pay into the *Exchequer* ſums not exceeding 1,155,000*l.* for purchaſing annuities payable for 99 years, from the 25th of *March* 1707, at the rate of ſixteen years purchaſe, *viz.* 160*l.* for every annuity of 10*l. per ann.* payable at the four moſt uſual feaſt-days."

5 Ann. c. 19.

Sect. 19. "And be it further enacted by the authority aforeſaid, that all and every contributor and contributors upon this act, duly paying the conſideration or purchaſe money, at the rate aforeſaid, at or before the reſpective days or times in this act limited in that behalf, for any ſuch annuity, or annuities as aforeſaid, or ſuch as he, ſhe or they ſhall appoint, his, her or their reſpective executors, adminiſtrators, ſucceſſors and aſſigns, ſhall have, receive and enjoy, and be entitled, by virtue of this act, to have, receive and enjoy the reſpective annuity and annuities ſo to be purchaſed, out of the monies by this act appropriated or appointed for the payment thereof, during the ſaid whole term of ninety-nine years, as is above-mentioned; and that all and every ſuch purchaſers, their executors, adminiſtrators and aſſigns reſpectively, ſhall have good and ſure eſtates and intereſts in the ſeveral annuities, ſo by them to be purchaſed according to the tenor and true meaning of this act, and that all the ſaid annuities to be purchaſed upon this act, and every of them, during the term aforeſaid, ſhall be free from all taxes, charges and impoſitions whatſoever."

Contributors paying, &c. to enjoy ſure eſtates in annuities purchaſed.

Stat. 6 *Ann. c.* 5. [*A. D.* 1707.] *ſect.* 8. "Natives or foreigners may pay into the *Exchequer* ſums not exceeding 640,000*l.* for purchaſing annuities payable for 99 years, from the 25th of *March* 1708, at 16 years purchaſe, *viz.* 160*l.* for every annuity of 10*l.* payable at the four moſt uſual feaſt-days."

6 Ann. c. 5.

Sect. 15. "And be it further enacted, that it ſhall and may be lawful to and for any contributor or contributors, his, her or their executors, adminiſtrators, ſucceſſors or aſſigns, at any time or times, during the continuance of his, her or their term, eſtate or intereſt of, and in any annuity to be purchaſed upon this act, by any writing under his, her or their hands and ſeals, or under the common ſeal of a corporation, or by his, her

Annuities aſſignable, &c.

her or their laſt will in writing, to aſſign, or deviſe ſuch annuity, or any part thereof, or any intereſt therein, to any perſon or perſons whatſoever, and ſo *toties quoties*, and no ſuch aſſignment to be revokable, ſo as an entry or memorandum of ſuch aſſignment or will be made in books to be kept for that purpoſe in the ſaid office of the auditor of the receipt, within the ſpace of three months after ſuch aſſignment, or death of the deviſor; and that upon producing ſuch aſſignment, or will, or probat thereof in the ſaid office of receipt, to be entred, as aforeſaid, the party ſo producing the ſame ſhall bring therewith an affidavit taken before one or more of her majeſty's juſtices of the peace, of the due execution of the ſaid aſſignment or will, which affidavit ſhall be ſeverally filed in the ſaid office; which ſaid entry or memorandum the proper officers of the ſaid receipt of *Exchequer* are hereby required to make accordingly, and to file the ſaid affidavits; and in default of ſuch aſſignment or deviſe by deed or will, the intereſt of ſuch contributor ſhall go to his or her executors or adminiſtrators."

30 Geo. 2. c. 19.

Stat. 30 *Geo.* 2. *c.* 19. [*A. D.* 1757.] *ſect.* 31. "Contributors to the ſum of three millions mentioned in this act are to have annuities of 3 *per cent. per ann.* transferrable at the bank, and redeemable by parliament; and for every hundred pounds ſubſcribed an annuity for life of 1 *l.* 2 *s.* 6 *d.* payable at the *Exchequer* half-yearly, on the 5th day of *January* and 5th day of *July*, and aſſignable; for paying of which life annuities 33,750 *l.* is to be reſerved yearly out of the monies ariſing by act."

On demanding the annuity, certificate from the miniſter and churchwardens to be produced of the life of the nominee, if reſident in England; or the ſame to be certified, on oath, before a juſtice; and in places extraparochial.

Sect. 62. "And for preventing all frauds in receiving any ſhare of the yearly fund hereby appointed to be ſet apart, every contributor, his or her executors, adminiſtrators, aſſigns, or agents, upon demand of any half-yearly payment of his or her reſpective ſhares of the ſaid yearly fund (unleſs the nominee appears in perſon at the ſaid receipt) ſhall produce a certificate of the life of his, her or their reſpective nominee, ſigned by the miniſter and churchwardens of the pariſh where ſuch nominee ſhall be then living, upon the day when the ſaid half-yearly payments ſhall become due (if ſuch nominee be then reſiding in that part of *Great Britain* called *England*, dominion of *Wales*, or town of *Berwick upon Tweed*;) or otherwiſe, it ſhall and may be lawful to and for every ſuch contributor, or his or her executors, adminiſtrators or aſſigns, at his or her election, to make oath of the truth of his, her or their reſpective nominee's life upon the day when the ſaid half yearly payment ſhall become due, before one or more juſtices of the peace of the reſpective county, riding, city, town or place wherein ſuch perſon, at the time of making ſuch oath ſhall reſide; and in like manner every ſuch contributor, his or their executors, adminiſtrators, aſſigns, or agents, whoſe nominee ſhall reſide in any town or place, being extraparochial, upon the day where any of the ſaid half-yearly payments ſhall become due, ſhall make a like oath before any ſuch juſtice or juſtices aforeſaid, of the life of ſuch nominee on that day (which oath the ſaid juſtice or juſtices of the peace are hereby impowered to adminiſter)

miniſter) and ſuch juſtice or juſtices ſhall make a certificate thereof; for which oath and certificate no fee or reward ſhall be demanded or paid.

Sect. 68. "And for preventing all frauds and abuſes in or about the ſtanding orders for paying the ſaid annuities, or any aſſignments thereof, or the receiving the annuities due or to grow due thereon; Be it enacted by the authority aforeſaid, that if any perſon or perſons whatſoever ſhall forge or counterfeit, or procure to be forged or counterfeited, or knowingly or wilfully act or aſſiſt in the forging or counterfeiting any certificate or certificates to be given up by ſuch caſhier or caſhiers, or any order or orders to be made forth in lieu thereof, in purſuance of this preſent act, or any aſſignment or aſſignments of ſuch order or orders, or of the annuities payable thereon, or of any receipt or diſcharge to the *Exchequer*, for the annuities due or to grow due on any ſuch order or orders, or of any letter of attorney, or other authority or inſtrument, to transfer, aſſign, alien or convey any ſuch order or orders, or to receive the annuities due or to grow due thereon, or any part thereof; or ſhall forge or counterfeit, or procure to be forged or counterfeited, or knowingly or wilfully act or aſſiſt in the forging or counterfeiting any the name or names of any of the proprietors of any ſuch order or orders, in or to any ſuch pretended aſſignment or aſſignments, receipt, letter of attorney, certificate, inſtrument or authority; or ſhall falſely and deceitfully perſonate any true and real proprietor or proprietors of any of the ſaid orders, and thereby aſſign, or endeavour to aſſign, any of the ſaid orders, or receive or endeavour to receive the money of ſuch true and lawful proprietor, as if ſuch offender were the true and lawful owner thereof; then, and in every ſuch caſe, all and every ſuch perſon and perſons being thereof lawfully convicted in due form of law, ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony, without benefit of clergy." Penalty of forging or counterfeiting certificates, &c. or of fraudulently receiving annuities.

Stat. 9 *Geo.* 1. *c.* 12. [*A. D.* 1722.] *ſect.* 1. "The proprietors of the ſtanding orders made forth in purſuance of the acts 6 *Geo.* 1. *c.* 11. and 8 *Geo.* 1. *c.* 20. may, by aſſignment indorſed on their orders, aſſign or transfer their intereſt. 9 Geo. 1. c. 12.

Sect. 4. "And for the preventing all frauds and abuſes in or about the ſaid ſtanding orders, or any aſſignments thereof, or the receiving the annuities due or to grow thereon; Be it enacted by the authority aforeſaid, that if any perſon or perſons whatſoever, from and after the ſecond day of *April* one thouſand ſeven hundred and twenty-three, ſhall forge or counterfeit, or procure to be forged or counterfeited, or knowingly or wilfully act and aſſiſt in the forging or counterfeiting any order or orders made forth, or to be made forth in purſuance of any the before-mentioned acts, or of this preſent act, or any aſſignment or aſſignments of ſuch order or orders, or of the annuities payable thereon, or of any receipt or diſcharge to the *Exchequer* for the annuities due or to grow due on any ſuch ſtanding order or orders, or of any letter of attorney, or other authority or inſtrument, to transfer, aſſign, alien, or convey any ſuch order or orders, or to receive the annuities due or to grow due thereon, or any

Counterfeiting orders, felony.

part thereof, or ſhall forge or counterfeit, or procure to be forged or counterfeited, or knowingly or wilfully act or aſſiſt in the forging or counterfeiting any the name or names of any of the proprietors of any ſuch order or orders in or to any ſuch pretended aſſignment, receipt, letter of attorney, inſtrument, or authority, or ſhall knowingly and fraudulently demand, or endeavour to have or receive any ſuch annuity or annuities, or any part thereof, by virtue of any ſuch forged or counterfeited receipt, letter of attorney, inſtrument, or authority, or ſhall falſly and deceitfully perſonate any true and real proprietor or proprietors of any of the ſaid order or orders, and thereby aſſigning, or endeavouring to aſſign, any of the ſaid order or orders, or receiving, or endeavouring to receive the money of ſuch true and lawful proprietor, as if ſuch offender were the true and lawful owner thereof; then and in every or any ſuch caſe, all and every ſuch perſon and perſons (being thereof lawfully convicted in due form of law) ſhall be adjudged guilty of felony, and ſhall ſuffer as in caſes of felony, without benefit of clergy."

4 Geo. 2. c. 9.

Stat. 4 *Geo.* 2. *c.* 9. *ſect.* 9. "If any perſon ſhall counterfeit any order to receive the annuities mentioned in the ſaid act, or power to transfer the ſame, or the name of the proprietor, or ſhall perſonate ſuch proprietor, he ſhall be guilty of felony without benefit of clergy." *But the ſaid annuities were directed to be redeemed by* 25 Geo. 2. c. 25. ſect. 19.

9 Geo. 2. c. 34.

Stat. 9 *Geo.* 2. *c.* 34. *ſect.* 1. "Any perſons, natives or foreigners may pay into the *Exchequer* any ſums not exceeding 600,000*l.* for the purchaſe of annuities of 3*l. per ann.* for every 100*l.* redeemable by parliament. And by *ſect.* 8. of this act, forging or counterfeiting orders, *&c.* to receive thoſe annuities, is made felony without benefit of clergy. *But by ſtat.* 25 Geo. 2. c. 27. *thoſe annuities are converted into a joint-ſtock of annuities transferrable at the Bank.*

Appeal.

APPEAL, (*Appellum*, from the Fr. *appel* or *appeller*, to call, becauſe *appellans vocat reum in judicium*) has two ſignifications; one is, removing a cauſe from an inferior to a ſuperior court, as in the ſtat. 24 *Hen.* 8. *c.* 12. and 1 *El. c.* 1. The other kind of appeal is an accuſation of another in legal form, for a crime by him committed. *Co. Lit.* 123. *b.* 287. *b.* It ſignifies in our common law, as much as *accuſatio* with the civilians; for as in the civil law, cognizance of criminal cauſes is taken either upon *inquiſition* and *denunciation*, or *accuſation*; ſo in ours cognizance is taken of criminal cauſes upon indictment or appeal; indictment comprehending both *inquiſition* and *denunciation*. An *accuſation*, or *appeal*, is a lawful declaration of another man's crime (which by *Bracton* muſt

muſt be felony at the leaſt) before a competent judge, by one that ſetteth his name to the declaration, and undertakes to prove it, upon the penalty that may enſue thereon. *Cowell*, edit. 1727.

There were anciently ſeveral kinds of appeals, which ſeem obſolete at this day; as appeals of treaſon, which might be ſued before the parliament and other courts of law, as well as before the conſtable and marſhal, and were determinable by battle. 2 *Inſt.* 132. *Bract.* 118. 2 *Hawk. P. C.* 161.

But appeals before the parliament are taken away by 1 *H.* 4. *c.* 4. and thoſe before other law courts are become obſolete.

An appeal of death, which is now chiefly in uſe, is a vindictive action which the law gives a wife againſt her huſband's murderer, and to the heir at law againſt one who kills his anceſtor, which being the ſuit of the ſubject, the king cannot pardon. 1 *Bac. Abr.* 122.

By *Magna Charta* (*Stat.* 9 *H.* 3. *c.* 34.) *No man ſhall be taken or impriſoned upon the appeal of a woman for the death of any other than of her huſband.* Who may have an appeal of death.

It being alleged by ſome, and eſpecially by *Treby* Ch. J. that an appeal was a revengeful odious proſecution, and therefore deſerved no encouragement; on which occaſion *Holt* with great vehemency and zeal, ſaid, that he wondered any *Engliſhman* ſhould brand an appeal with the name of an odious proſecution; that for his part he looked upon it to be a noble proſecution, and a true badge of *Engliſh* liberties, and referred to the ſtatute of *Glouceſter*, and the comment thereupon in 2 *Inſt.* 12 *Mod.* 375.

At the common law, before the ſtatute 9 *Hen.* 3. a woman as well as a man might have had an appeal of death of any of her anceſtors, and therefore the *ſon of a woman* ſhall at this day have an appeal, if he be heir at the death of the anceſtor, for the ſon is not diſabled, but the mother only, for the ſtatute ſays, *propter appellum feminæ.* 2 Inſt. 68.

An infant may bring an appeal, but he muſt proſecute it by guardian, and he ſhall be nonſuited upon ſuch guardian's non-appearance at a day wherein he is demandable; but if the infant comes into court, and ſays, that he will relinquiſh the ſuit, and the guardian inſiſts to continue it, the court may diſcharge him and aſſign another. *Moor* 461. *H. P. C.* 183.

But an ideot, or perſon born deaf and dumb, or one attainted of treaſon or felony, or outlawed in a perſonal action, ſo long as ſuch attainder or outlawry continues in force, cannot bring any appeal whatſoever. 2 *Hawk.* 168. *H. P. C.* 183. 2 *Hawk. P. C.* 162.

If the wife take another huſband either before or pending the appeal, ſhe puts an end to it for ever; and if ſhe marry after judgment, ſhe cannot pray execution. 2 *Hawk. P. C.* 164.

By the ſtatute of *Glouceſter*, 6 *Ed.* 1. *cap.* 9. which is conſtrued to extend only to appeals of death, *an appeal ſhall not be abated for default of freſh ſuit, if the party ſue within the year and day after the deed done*; the computation whereof, as the law is now ſettled, ſhall be made not from the day when the wound was given, but from the day when the party died; When, where, and in what manner an appeal of death muſt be proſecuted.

died; alſo the year and day ſhall be from the beginning of the day, and not from the preciſe time when the death happened, becauſe regularly no fraction ſhall be made of a day. 2 *Inſt.* 320. 3 *Inſt.* 53. 4 *Co.* 42. *b.* 2 *Hawk. P. C.* 162.

All appeals are local actions, and regularly to be tried in the county wherein the offence was committed. *Dyer* 38.

But it is ſaid, that if a perſon had died in one county of a wound given in another, the appeal might be brought in either of them, and the trial be at the bar by a jury returned from the body of each of thoſe counties; but ſince the 2 & 3 *Ed.* 6. *cap.* 2. which enacts, *that the party may ſue an appeal in the county where the perſon felonioufly ſtricken*, &c. *ſhall die*, &c. it ſeems the trial may be from ſuch county only. 2 *Hawk. P. C.* 163.

Appeals are commenced either by writ, which is an original out of *Chancery*, returnable to the *King's Bench* only, or by bill. 2 *Hawk. P. C.* 155.

Appeals by bill may be ſued in the *King's Bench* againſt any perſon in actual cuſtody, or by having bail filed for him there. *Cro. Eliz* 605.

If a man be brought into court either by a void writ of appeal, or by a voidable one, which is afterwards abated, he may be arraigned by bill in *cuſtodia mareſchalli.* 2 Hawk. P. C. 155. Skinner 634.

A bill of appeal lies before juſtices of *Eyre*, and before juſtices ſpecially aſſigned, and before juſtices of gaol-delivery, and for the ſame reaſon, as ſome ſay, before juſtices of aſſize, who by the purport of ſeveral ſtatutes are authorized to deliver goals without any ſpecial commiſſion againſt any priſoner in the gaol, which they are to deliver, or, as it is generally holden, againſt a perſon whom they have bailed. See 2 *Hawk. P. C.* 156.

Where an appeal of death may be abated, or not.

The writ in an appeal is an original iſſuing out of *Chancery*, returnable into the *King's Bench* only; before the return thereof the court of *Chancery* only can ſuperſede or ſet it aſide, where it appears to have iſſued *erronicè* [erroneouſly] or *improvidè* [improvidently] it, by ſome error extrinſic to the writ itſelf; but for any error or defect on the face of it, it may be quaſhed after it is returned, it into the *King's Bench.* Abr. Eq. 416.

The court *ex officio* will quaſh the writ for apparent faults appearing on the face of the writ; as where the ſenſe is defective for want of a material word, or where it wants thoſe words of art which the law has appropriated for the deſcription of the offence. 2 *Hawk. P. C.* 184.

So if, in a writ of appeal brought by huſband and wife, the concluſion is in the name of the wife only; or if the writ omits either the name of baptiſm, or ſurname of the appellant or appellee, being under the degree of nobility, it ſhall be abated. 2 *Hawk. P. C.* 185.

Alſo the court will abate the writ when the declaration varies from the writ in ſome material point, either as to the reign of the king, or as to the county wherein the fact is laid, *&c.* 2 Hawk. P. C. 184.

On the exception of the party the court will abate the writ; as if he ſhews that there are not fifteen days between the *teſte* and return of the writ;

writ; but this he muſt do before he has pleaded in chief, without taking advantage of it. 1 *Salk.* 63. 1 *Vent.* 73.

If the writ or declaration miſtake either the name of baptiſm, or ſurname, or addition of the appellant or appellee, the appellant before imparlance may plead it in abatement. See 2 *Hawk. P. C.* 184.

But the omiſſion or inſufficiency of an addition, are ſalved by the appellee's coming in and pleading, without taking any advantage of ſuch defect, but not by his bare appearance. 2 *Hawk. P. C.* 190.

The defendant may at the ſame time plead as many pleas in abatement as he pleaſes, together with matter in bar, and the general iſſue, if he can do it without repugnancy; and if he be ſuffered to plead any ſuch plea without pleading with it the general iſſue, the finding it againſt him doth not conclude him from pleading the general iſſue afterwards. 2 *Hawk. P. C.* 191, 192.

A woman *poiſoned* her huſband, which is treaſon by the ſtatute 31 *H.* 8. the heir brought an appeal *of murder* againſt his mother; adjudged, that it did not lie becauſe it was not murder, but treaſon, and the greater offence drowns the leſs. *Dyer* 50.

There were *three brothers*, and the *middle brother* was killed, the eldeſt died within the year, and no appeal brought, it was a queſtion, whether the younger ſhould have an appeal; it was not reſolved, tho' *Forteſcue*, 20 *H.* 6. 43. held he ſhould not, but the 16 *H.* 7. 15. 'tis held he ſhould. *Dyer* 69.

Appeal of murder brought by the *wife*; the caſe was, Sir *Charles Blunt* came to the houſe of *Clements* the deceaſed, and demanded a *dog*, and in entering the houſe being oppoſed by *Clements*, they fought, and *Clements* was killed; and this appearing upon evidence to the coroners inqueſt, the queſtion was, whether the depoſitions of thoſe witneſſes ſhould be given in evidence upon this appeal? It was objected, that they ſhould not, becauſe not between the ſame parties, for the coroner is an officer for the King, but the appeal is between party and party. 2 *Rol. Rep.* 460.

Puniſhment for a falſe appeal.

By common law a defendant may recover damages for a falſe and malicious appeal, againſt the appellant and his abettors, by a writ of conſpiracy or action on the caſe. *Co. Lit.* 283.

And by ſtat. *Weſtm.* 2. *cap.* 12. it is enacted as followeth, " For as much as many thro' malice, intending to grieve others, do procure falſe appeals to be made of homicides and other felonies, by appellors having nothing to ſatisfy the king for their falſe appeal, nor to the parties appealed for their damages; it is ordained, that when any being appealed of felony ſurmiſed upon him, doth acquit himſelf in the king's court in due manner, either at the ſuit of the appellor or our lord the King, the juſtices before whom the appeal ſhall be heard, ſhall puniſh the appellor by a year's impriſonment, and the appellor ſhall nevertheleſs reſtore to the parties appealed their damages, according to the diſcretion of the juſtices, having reſpect to the impriſonment or arreſtment that the party appealed hath ſuſtained by reaſon of ſuch appeals, and to the infamy that they have incurred by the impriſonment or otherwiſe; and ſhall nevertheleſs

make-

make a grievous fine unto the King; and if peradventure ſuch appellor be not able to recompence the damages, it ſhall be inquired by whoſe abetment by malice the appeal was commenced, if the party appealed deſire it; and if it be found by the ſame inqueſt, that any man is an abettor thro' malice, he ſhall be diſtrained by a judicial writ at the ſuit of the party appealed, to come before the juſtices; and if he be lawfully convicted of ſuch malicious abetment, he ſhall be puniſhed by impriſonment and reſtitution of damages, as before is ſaid of the appellor."

Mr. ſerjeant *Hawkins* ſays, there is no doubt but that by the expreſs words of the ſtatute, wherever the appellant or his abettors are by the purport thereof to render damages to an appellee, they are alſo to be fined to the King, and impriſoned for a year. Alſo it ſeems clear from the general purport of the books, that an appellant appearing to have brought an ill-grounded appeal, whether of felony or maihem, ſhall be fined in many caſes wherein he is not liable to render damages by the ſtatute abovementioned; as where he is nonſuit, either againſt all or part of the appellees only, whether after, or as ſome have holden, before appearance; or whether the ſuit abates through the default of the appellant in wilfully ſuing by a wrong name or a vitious writ, *&c.* and even a feme covert ſuing an appeal known by her to be groundleſs, as for the death of a huſband whom ſhe knows to be alive, ſhall be fined. But it is certain that where a writ abates by the act of God, or for any other cauſe no way imputable to the appellant, he ſhall neither be fined nor amerced. Alſo it is certain, that an infant in no caſe is to be fined for a falſe appeal; but ſome have holden that he may be amerced, which is contradicted by others, who ſay that an infant in no caſe can be amerced. 2 *Hawk. P. C.* 204. *For more learning on this ſubject, ſee* 1 Bac. Abr. 2 Vin. Abr. *and* Cunningham's *Law Dict. tit. Appeal.*

Apples and pears.

1 Ann. ſtat. 1. c. 15.

STAT. 1 *Ann. ſtat.* 1. *c.* 15. [*A. D.* 1701. *intituled,*] "An act to aſcertain the water-meaſure of fruit."

"Whereas apples and pears are frequently ſold by meaſure, commonly called *Water Meaſure*, the contents whereof are very uncertain, and not aſcertained by law: And whereas the uncertainty thereof occaſions many frivolous and vexatious ſuits between the buyer and ſeller: Be it therefore enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, that the meaſure, commonly called *Water Meaſure*, ſhall be round, and in diameter eighteen inches and an half within the hoop, and eight inches deep, and no more, and ſo in proportion for any greater or leſſer meaſure; and that

Water meaſure deſcribed.

every meaſure, commonly called *Water Meaſure*, by which apples and pears are ſold, ſhall be heaped as uſually; and that whoſoever ſhall ſell or buy any apples or pears by or with any other meaſure, ſhall forfeit for every ſuch offence ten ſhillings, one half to the informer, the other half to the poor of the pariſh where ſuch offence ſhall be committed, being thereof lawfully convicted by the oath of one ſufficient witneſs before any juſtice of the peace, mayor, or other head officer of the county, city, or town corporate, where the ſaid offence ſhall be committed, who by virtue of this act ſhall have power to adminiſter an oath in that behalf, which ſaid ſum of ten ſhillings ſhall be levied by warrant from the ſaid juſtice of the peace, mayor, or other head officer, by the petty conſtable of the ſame pariſh, of the goods and chattels of ſuch offenders, by way of diſtreſs and ſale of the offender's goods, rendring to the offender or offenders the overplus.

Fruit ſold by water meaſure ſhall be heaped. Penalty.

II. "Provided, that this act, or any thing therein contained, ſhall not extend to any meaſures ſealed and allowed by the maſters, wardens, aſſiſtants, and commonalty of the freemen of the art or myſtery of the fruiterers of the city of *London*, to be uſed in the meaſuring of fruit ſold by them in the ſaid city, and liberties thereof, or within three miles diſtant from the ſame city.

Not to extend to ſealed meaſures allowed by the fruiterers company of London.

Apprentices.

APPRENTICE, *apprentitius*, (French *apprentis*, from *apprendre*, to learn; whence the French *apprentiſſage*; and our *apprenticeſhip*) ſignifies with us one that is bound in word or writing, to ſerve another man of trade for certain years, upon condition that the artificer or maſter ſhall in that mean time endeavour to inſtruct him in his art or myſtery. *Smith de Rep. Ang. lib.* 3. *cap.* 8. ſaith, they are a kind of bondmen, differing only, that they are ſervants by covenant, and for a time. Barriſters at law were heretofore called *apprentices of the law*, in Latin *apprentitii juris nobiliores*. So ſaith Mr. *Seldon* in his notes upon *Forteſcue*, p. 3. and ſo the learned Mr. *Plowden* ſtiled himſelf. Sir *Henry Finch*, in his Nomotechnia, gives himſelf the ſame title; and Sir *Edward Coke*, 2 *Inſt. fol.* 564. holds, that *apprentitii legis* are called *homines conſiliarii, & in lege periti*, and in another place——*apprentices and other counſellors of law*. As to the word *apprentitius*, as it ſignifies a young perſon, bound by indentures to a maſter, who upon ſuch covenants is to teach him his miſtery or trade; the oldeſt authority ſeems to be from a charter, dated 12 *Ed.* 3. recited in *Kennet's Parochial Antiquities*, p. 449. at leaſt we have met with no mention of them till the beginning of the next reign. Thus, *Henry de Knighton, ſub ann.* 1381. *apprentitii quoque relictis magiſtris ſuis illuc accurrebant.* And *Tho. Walſingham* in *Ric.* 2. *p.* 103. *de Londonio multi apprentitii, plures ſervi, ſumptis albis caputiis, invitis magiſtris & dominis ſunt profecti.* Vide *Seldne's Notes on Forteſcue, p.* 2. *Orig. Jurid. fol.* 143. *a.* and the ſtatute of *Champerty*, 33 *Ed.* 1. *Cowell*, edit. 1727.

Stat. 5. El c. 4. **Stat.** 5 *Eliz. c.* 4. [*A. D.* 1562. *intituled,*] "An act containing divers orders for artificers, labourers, ſervants of huſbandry and apprentices."

Huſbandmen may take apprentices.

Sect. 25. "And for the better advancement of huſbandry and tillage, and to the intent that ſuch as are fit to be made apprentices to huſbandry, may be bounden thereunto, (2) Be it enacted by the authority of this preſent parliament, that every perſon being an houſholder, and having and uſing half a plough-land at the leaſt in tillage, may have and receive to an apprentice any perſon above the age of ten years, and under the age of eighteen years, to ſerve in huſbandry, until his age of one and twenty years at the leaſt, or until the age of twenty-four, as the parties can agree; and the ſaid retainer, and taking of an apprentice, to be made and done by indenture.

Every houſeholder dwelling in any town corporate may take an apprentice for ſeven years.

Sect. 26. "And be it further enacted, that every perſon being an houſholder, and twenty-four years old at the leaſt, dwelling or inhabiting, or which ſhall dwell and inhabit in any city or town corporate, and uſing and exerciſing any art, myſtery, or manual occupation there, ſhall and may after the feaſt of Saint *John Baptiſt* next coming, during the time that he ſhall ſo dwell or inhabit in any ſuch city or town corporate, and uſe and exerciſe any ſuch art or myſtery, or manual occupation, have and retain the ſon of any freeman, not occupying huſbandry, nor being a labourer, and inhabiting in the ſame, or in any other city or town that now is, or hereafter ſhall be and continue incorporate, to ſerve and be bound as an apprentice, after the cuſtom and order of the city of *London*, for ſeven years at the leaſt, ſo as the term and years of ſuch apprentice do not expire or determine afore ſuch apprentice ſhall be of the age of twenty-four years at the leaſt.

Merchants, &c. may take no apprentices, but ſuch whoſe parents may diſpend 40s. of freehold.

Sect. 27. "Provided always, and be it enacted, that it ſhall not be lawful to any perſon dwelling in any city or town corporate, uſing or exerciſing any of the myſteries or crafts of a merchant trafficking by traffick or trade into any the parts beyond the ſea, mercer, draper, goldſmith, ironmonger, imbroiderer, or clothier, that doth or ſhall put cloth to making and ſale, to take any apprentice or ſervant to be inſtructed or taught in any of the arts, occupations, crafts or myſteries which they or any of them do uſe or exerciſe, except ſuch ſervant or apprentice be his ſon; (2) or elſe that the father and mother of ſuch apprentice or ſervant ſhall have, at the time of taking ſuch apprentice or ſervant, lands, tenements, or other hereditaments, of the clear yearly value of forty ſhillings of one eſtate of inheritance, or freehold at the leaſt, to be certified under the hands and ſeals of three juſtices of the peace of the ſhire, or ſhires where the ſaid lands tenements, or other hereditaments, do or ſhall lie, to the mayor, bailiff, or other head officers of that city or town corporate, and to be inrolled among the records there."

Whom they may have for their apprentices who dwell in market-towns not corporate.

Sect. 28. "And be it further enacted, that from and after the ſaid feaſt of St. *John* the *Baptiſt* next, it ſhall be lawful to every perſon being an houſholder, and four and twenty years old at the leaſt, and not occupying huſbandry, nor being a labourer, dwelling or inhabiting, or that ſhall hereafter dwell or inhabit in any town not being incorporate, that now is, or hereafter ſhall be a market town, ſo long as the ſame ſhall be weekly uſed, and

and kept as a market-town, and using or exercising any art, mystery, or manual occupation, during the time of his abode there, and so using and exercising such art, mystery, or manual occupation, as aforesaid, to have in like manner to apprentice or apprentices, the child or children of any other artificer or artificers, not occupying husbandry, nor being a labourer, which now do, or hereafter shall inhabit or dwell in the same, or any other such market-town, within the same shire, to serve as an apprentice or apprentices, as is aforesaid, to any such art, mystery, or manual occupation, as hath been usually exercised in any such market-town, where such apprentice shall be bound in manner and form abovesaid." 8 Cok. 129.

Sect. 29. "Provided always, and be it enacted, that it shall not be lawful to any person, dwelling or inhabiting in any such market-town, using or exercising the feat, mystery or art of a merchant, trafficking or trading into the parts beyond the seas, mercer, draper, goldsmith, ironmonger, imbroiderer, or clothier, that doth or shall put cloth to making and sale, to take any apprentice, or in any wise to teach or instruct any person in the arts, sciences or mysteries last before-recited, after the feast of St. *John Baptist* aforesaid, except such servant or apprentice shall be his son; or else that the father and mother of such apprentice shall have lands, tenements, or other hereditaments at the time of taking such apprentice, of the yearly value of three pounds, of one estate of inheritance, or freehold at the least, to be certified under the hands and seals of three justices of the peace of the shire or shires, where the said lands, tenements or other hereditaments, do or shall lie, to the head officers or head officer of such market-town where such apprentice or servant shall be taken, there to be inrolled by such head officers always to remain of ecord." What apprentices merchants, &c. dwelling in a market-town not corporate, may take. Cro. El. 723.

Sect. 30. "And be it further enacted, that from and after the said feast, it shall be lawful to any person using or exercising the art or occupation of a smith, wheel-wright, plough-wright, mill-wright, carpenter, rough mason, plaisterer, sawyer, lime-burner, brick-maker, bricklayer, tyler, slater, helier, tyle-maker, linnen-weaver, turner, cowper, miller, earthen potters, woollen weaver, weaving housewives or household cloth only, and none other cloth; fuller, otherwise called, tucker or walker, burner of oare and wood-ashes, thatcher, or shingler, whereseever he or they shall dwell or inhabit, to have or receive the son of any person as apprentice in manner and form aforesaid, to be taught and instructed in these occupations only, and in none other, albeit the father or mother of any such apprentice have not any lands, tenements or hereditaments." These Artificers may take apprentices whose parents may dispend no land. 1 Lev. 249. 2 Salk. 611. Carthew 162. 3 Mod. 152.

Sect. 31. "And be it further enacted by the authority aforesaid, that after the first day of *May* next coming, it shall not be lawful to any person or persons, other than such as now do lawfully use or exercise any art, mystery or manual occupation, (2) to set up, occupy, use or exercise any craft, mystery, or occupation now used or occupied within the realm of *England* or *Wales*; except he shall have been brought up therein seven years at the least as an apprentice, in manner and form abovesaid; (4) nor to set any person on work in such mystery, art, or occupation, being not a workman at this day; (5) except he shall have been apprentice as is aforesaid; (6) or else have served as an apprentice, as is aforesaid, shall or None may use any manual occupation except he hath been apprentice to the same. 31 El. c. 5. 3 Bulst. 179. 1 Roll. 10. 2 Roll. 391. Stiles 223,

383. diſtillers exempted by 12 Annæ Stat. 2. c. 3. ſ. 1. 1 Lutw. 164. 2 Lev. 206. will become a journey-man, or hired by the year; (7) upon pain that every perſon willingly offending or doing the contrary, ſhall forfeit and loſe, for every default, forty ſhillings for every month.

8 Co. 129. 11 Co. 54. Cro. El. 737. Cro. Jac. 85, 178, 538. Cro. Car. 316, 347, 499, 516. Hob. 211, 183. Noy 5.

He that hath three apprentices muſt keep one journeyman.

Sect. 33. "And be it further enacted by the authority aforeſaid, that all and every perſon and perſons that ſhall have three apprentices in any the ſaid crafts, myſteries or occupations of a cloth-maker, fuller, and ſhearman, weaver, taylor or ſhoemaker, ſhall retain and keep one journeyman, and for every other apprentice above the number of the ſaid three apprentices, one other journeyman, upon pain for every default ten pounds."

A proviſo for the liberties of worſted makers in Norwich and Norfolk. 14 & 15 H. 8. c. 3.

Sect. 34. "Provided always, that this act, nor any thing therein contained, ſhall not extend to prejudice or hinder any liberties heretofore granted by any act of parliament, to or for the company and occupation of worſted-makers and worſted-weavers within the city of *Norwich*, and elſewhere within the county of *Norfolk*, which liberties be in force until the beginning of this preſent parliament; any thing therein contained to the contrary in any wiſe notwithſtanding."

The puniſhment of him that refuſeth to be an apprentice.

Sect. 35. "And be it farther enacted, that if any perſon ſhall be required by any houſholder, having and uſing half a plough-land at the leaſt in tillage, to be an apprentice, and to ſerve in huſbandry, or in any other kind of art, myſtery or ſcience before expreſſed, and ſhall refuſe ſo to do, that then upon complaint of ſuch houſekeeper made to one juſtice of the peace of the county where the ſaid refuſal is or ſhall be made, or of ſuch houſholder inhabiting in any city, town corporate, or market-town, to the mayor, bailiffs, or head officer of the ſaid city, town corporate, or market-town, if any ſuch refuſal ſhall there be, they ſhall have full power and authority by virtue hereof, to ſend for the ſame perſon ſo refuſing: (2) and if the juſtice, or the ſaid mayor or head officer, ſhall think the ſaid perſon meet and convenient to ſerve as an apprentice in that art, labour ſcience or myſtery wherein he ſhall be ſo then required to ſerve; that then the ſaid juſtice, or the ſaid mayor or head officer, ſhall have power and authority by virtue hereof, if the ſaid perſon refuſe to be bound as an apprentice, to commit him unto ward, there to remain until he be contented, and will be bounden to ſerve as an apprentice ſhould ſerve, according to the true intent and meaning of this preſent act. (3) And if any ſuch maſter ſhall miſuſe or evil intreat his apprentice, or that the ſaid apprentice ſhall have any juſt cauſe to complain; or the apprentice do not his duty to his maſter, then the ſaid maſter or apprentice being grieved, and having cauſe to complain, ſhall repair unto one juſtice of peace within the ſaid county, or to the mayor or other head officer of the ſaid city, town corporate, market town, or other place where the ſaid maſter dwelleth, who ſhall by his wiſdom and diſcretion take ſuch order and direction between the ſaid maſter and his apprentice, as the equity of the cauſe ſhall require; (4) and if for want of good conformity in the maſter, the ſaid juſtice of peace, or the ſaid mayor or head officer cannot compound and agree the matter between him and his apprentice, then the ſaid juſtice or the

The remedy for the apprentice which is miſuſed by his maſter, and for the maſter when the apprentice doth not his duty.

the ſaid mayor or other head officer ſhall take bond of the ſaid maſter, to appear at the next ſeſſions then to be holden in the ſaid county, or within the ſaid city, town corporate, or market-town, to be before the juſtices or the ſaid county, or the mayor or head officer of the ſaid town corporate of market-town, if the ſaid maſter dwell within any ſuch; (5) and upon his appearance, and hearing of the matter before the ſaid juſtices or the ſaid mayor or other head officer, if it be thought meet unto them, to diſcharge the ſaid apprentice of his apprenticehood, that then the ſaid juſtices, or four of them at the leaſt, whereof one to be of the *Quorum*; or the ſaid mayor or other head officer, with the conſent of three other of his brethren, or men of beſt reputation within the ſaid city, town corporate or market-town, ſhall have power by authority hereof, in writing under their hands and ſeals, to pronounce and declare, that they have diſcharged the ſaid apprentice of his apprenticehood, and the cauſe thereof; (6) and the ſaid writing ſo being made and enrolled by the clerk of the peace, or town-clerk, amongſt the records that he keepeth, ſhall be a ſufficient diſcharge for the ſaid apprentice againſt his maſter, his executors and adminiſtrators; the indenture of the ſaid apprenticehood, or any law or cuſtom to the contrary notwithſtanding. (7) And if the default ſhall be found to be in the apprentice, then the ſaid juſtices, or the ſaid mayor or other head officer, with the aſſiſtance aforeſaid, ſhall cauſe ſuch due correction and puniſhment to be miniſtred unto him, as by their wiſdom and diſcretions ſhall be thought meet.

Where an apprentice may be diſcharged of his apprenticehood.

Sect. 36. "Provided always, and be it enacted by authority of this preſent parliament, that no perſon ſhall, by force or colour of this eſtatute, be bounden to enter into any apprenticeſhip, other than ſuch as be under the age of twenty-one years."

None ſhall be bound to be apprentices, but thoſe which be under xxi. years of age.

Sect. 37. "And to the end that this eſtatute may from time to time be carefully and diligently put in good execution, according to the tenor and true meaning thereof, Be it enacted by authority of this preſent parliament, that the juſtices of peace of every county, dividing themſelves into ſeveral limits, and likewiſe every mayor and head officer of any city or town corporate, ſhall yearly between the feaſt of St. *Michael* the archangel, and the nativity of our lord, and between the feaſt of the nativity of St. *John Baptiſt*, by all ſuch ways and means as to their wiſdoms ſhall be thought moſt meet, make a ſpecial and diligent enquiry of the branches and articles of this eſtatute, and of the good execution of the ſame, and where they ſhall find any defaults, to ſee the ſame ſeverely corrected and puniſhed, without favour, affection, malice or diſpleaſure."

Aſſembly of the juſtices twice in the year for the due execution of this ſtatute.

Sect. 38. "And in conſideration of the pains and travel that the ſaid juſtices of peace, and the ſaid mayor and head officer ſhall take and ſuſtain in and about the execution of this eſtatute, it is further ordained and enacted by authority of this preſent parliament, that every juſtice of peace, mayor or head officer, for every day that he ſhall ſit in and about the execution of this eſtatute, ſhall have allowed unto him five ſhillings, to be allowed and paid unto him, or unto the ſaid mayor or head officer, of the fines and forfeitures of the pains and penalties that ſhall be forfeited and due unto the queen's majeſty, her heirs and ſucceſſors, by force

The juſtices allowance for their pains.

of

of this eſtatute, in ſuch manner and form as the ſaid juſtices have been heretofore commonly paid for their coming and charges at the quarter-ſeſſions; ſo that the ſitting of the ſaid juſtices or mayor, or head officer, be not at any one time above three days, and for the matters contained in this eſtatute."

Who ſhall have the forfeitures mentioned in this ſtatute. Moor 886. 1 Cro. 499.

Sect. 39. "And be it enacted by authority aforeſaid, that the one half of all forfeitures and penalties expreſſed and mentioned in this eſtatute, other than ſuch as are expreſly otherwiſe appointed, ſhall be to our ſovereign lady the queen's majeſty, her heirs and ſucceſſors, and the other moiety to him or them that ſhall ſue for the ſame in any of the queen's majeſty's courts of record, or before any of the juſtices, of *Oyer* and *Terminer*, or before any other juſtices, or preſident and council before-remembred, by action of debt, information, bill of complaint, or otherwiſe; in which actions or ſuits, no protections, wager of law or eſſoin ſhall be allowed; (2) and that the ſaid juſtices, or two of them, whereof one to be of the *Quorum*, and the ſaid preſidents and council, as is aforeſaid, and the ſaid mayors or other head officers of cities or towns corporate, ſhall have full power and authority to hear and determine all and every offence and offences that ſhall be committed or done againſt this eſtatute, or againſt any branch thereof, as well upon indictment to be taken before them in the ſeſſions of the peace, as upon information, action of debt, or bill of complaint to be ſued or exhibited by any perſon; (3) and ſhall and may by virtue hereof, make proceſs againſt the defendant, and award execution, as in any other caſe they lawfully may by any the laws and ſtatutes of this realm; (4) and ſhall yearly in *Michaelmas* term certify by eſtreat, the fines and foreitures of every the offences contained in this eſtatute, that ſhall be found before them, in the court of Exchequer, in like ſort and form as they be bound to certify the eſtreats for other offences and forfeitures to be loſt before them; any thing in this ſtatute contained to the contrary notwithſtanding."

Juſtices of peace, mayor, &c. may hear and determine all offences committed againſt this ſtatute. 31 El. c. 5. 1 Salk. 370.

A proviſo for the cities of London and Norwich.

Sect. 40. "Provided always, that this act, or any thing therein contained or mentioned, ſhall not be prejudicial or hurtful to the cities of *London* and *Norwich*, or to the lawful liberties, uſages, cuſtoms or privileges of the ſame cities, for or concerning the having or taking of any apprentice or apprentices; but that the citizens and freemen of the ſame cities ſhall and may take, have and retain apprentices there, in ſuch manner and form as they might lawfully have done before the making of this ſtatute; this act or any thing therein contained to the contrary in any wiſe notwithſtanding.

The forfeiture of him that taketh a prentice otherwiſe than is limited by this ſtatute.

Sect. 41. "And be it alſo further enacted, that all indentures, covenants, promiſes and bargains of or for the having, taking or keeping of any apprentice, otherwiſe hereafter to be made or taken, than is by this ſtatute limited, ordained and appointed, ſhall be clearly void in the law, to all intents and purpoſes; (2) and that every perſon that ſhall from henceforth take or newly retain any apprentice contrary to the tenour and true meaning of this act, ſhall forfeit and loſe, for every apprentice ſo by him taken, the ſum of ten pounds."

He that is bound apprentice within the

Sect. 42. "And becauſe there hath been, and is ſome queſtion and ſcruple moved, whether any perſon being within the age of one and twenty years,

years, and bounden to ſerve as an apprentice, in any other place than in the ſaid city of *London*, ſhould be bounden, accepted and taken as an apprentice."

age of xxi. years, is compellable to ſerve.

Sect. 43. "For the reſolution of the ſaid ſcruple and doubt, be it enacted by authority of this preſent parliament, that all and every ſuch perſon or perſons, that at any time or times from henceforth ſhall be bounden by indenture, to ſerve as an apprentice in any art, ſcience, occupation or labour, according to the tenor of this eſtatute, and in manner and form aforeſaid, albeit the ſame apprentice, or any of them, ſhall be within the age of one and twenty years, at the time of the making of their ſeveral indentures, ſhall be bounden to ſerve for the years in their ſeveral indentures contained, as amply and largely to every intent, as if the ſame apprentice were of full age at the time of the making ſuch indentures; any law, uſage or cuſtom to the contrary notwithſtanding."

Cro. Car. 179.

Sect. 44. "Provided always, and be it enacted by the authority aforeſaid, that the inhabitants now dwelling or inhabiting, or that hereafter ſhall dwell or inhabit within the town of *Godalming* within the county of *Surrey*, within the limits of the watch of the ſaid town, may uſe and exerciſe ſuch arts, myſteries and occupations, and take and uſe apprentices and ſervants, in ſuch manner and form as the inhabitants within market-towns, by this ſtatute may lawfully do."

A proviſo for the inhabitants of Godalming in Surrey.

Sect. 45. "Provided always, and be it enacted by the authority aforeſaid, that all manner amerciaments, fines, iſſues and forfeitures which ſhall ariſe, grow, or come by reaſon of any offences or defaults mentioned in this act, or any branch thereof, within any city or town corporate, ſhall be levied, gathered and received by ſuch perſon or perſons of the ſame city or town corporate, as ſhall be appointed by the mayor, or other head officers mentioned in this ſaid act, to the uſe and maintainance of the ſame city or town corporate, in ſuch caſe and condition as any manner other amerciaments, fines, iſſues or forfeitures have been uſed to be levied and employed within the ſame city or town corporate, by reaſon of any grant or charter from the queen's majeſty that now is, or of any her grace's noble progenitors, made and granted to the ſame city, borough, or town corporate; any thing or clauſe before-mentioned and expreſſed in this act to the contrary notwithſtanding."

Who ſhall have the forfeiture in cities and towns corporate.

Sect. 47. "And be it further enacted by the authority aforeſaid, that if any ſervant or apprentice of huſbandry, or of any art, ſcience or occupation aforeſaid, unlawfully depart or flee into any other ſhire, that it ſhall be lawful to the ſaid juſtices of peace, and to the ſaid mayors, bailiffs, and other head officers of cities and towns corporate, for the time being juſtices of peace there, to make and grant writs of *Capias*, ſo many, and ſuch as ſhall be needful, to be directed to the ſheriffs of the counties, or to other head officers of the places whither ſuch ſervants or apprentices ſhall ſo depart or flee, to take their bodies, returnable before them at what time ſhall pleaſe them; ſo that if they come by ſuch proceſs, that they be put in priſon till they ſhall find ſufficient ſurety, well and honeſtly to ſerve their maſters, miſtreſſes or dames from whom they ſo departed or fled, according to the order of the law."

A remedy for thoſe ſervants which depart from their maſters, and do flee into other ſhires.

To be made and done by indenture,] [*See page 58. ſect. 25.*] "One can not be bound apprentice, nor diſcharged without a deed." 1 *Salk.* 68.

An infant apprentice muſt be bound by indenture. 1 Self. ca 222. Mich. 1 Geo 2. Smith v. Birch.

"An action was brought againſt the defendant for enticing away and detaining the plaintiff's apprentice, who had agreed by writing to ſerve the plaintiff for ſeven years. Upon evidence it appeared, that the ſtyle of the writing began, *This indenture*, &c. But in fact the parchment was not indented, but was a deed poll. Mr. ſerjeant *Corbet* took exception to the deed, and inſiſted that the young man was not an apprentice, becauſe he was not bound by indenture. An infant can be bound no other way than as the ſtatute 5 *Eliz. c.* 4. directs, which is to be by *indenture*, and nothing can make this good. The deed cannot now be indented, for that would be forgery; and by making it ſo it might be an eſtoppel; therefore unleſs the plaintiff ſhews the apprentice to be of full age at the time of ſigning ſuch deed, he cannot be accounted his apprentice; and by conſequence no action can lye againſt the defendant for detaining the apprentice, neither can the plaintiff prove him to be his ſervant by this deed. For he has declared for an apprentice, and muſt prove him ſo to be; therefore the plaintiff was nonſuited."

Perſon bound apprentice by deed, &c. though not indented, being firſt duly ſtamped, is intitled to a ſettlement where apprenticed.

But for the purpoſe of gaining a ſettlement, it is enacted by 31 *Geo.* 2. *c.* 11. *ſect.* 1. "That no perſon who ſhall have been bound an apprentice, or who ſhall hereafter be bound an apprentice, by any deed, writing or contract, *not indented*, being firſt legally ſtamped, ſhall be liable to be removed from the town, pariſh or place where he or ſhe ſhall have been ſo bound an apprentice, and reſident forty days, by virtue of any order of removal, granted by two juſtices of the Peace of any county, riding, diviſion, city, borough, town corporate or place; or by virtue of any order of the juſtices at their general or quarter ſeſſions, by reaſon or on account of ſuch deed, writing or contract, not being indented only."

It ſhall not be lawful to any perſon] [*See page 59 ſect.* 31.] But by *ſtat.* 15. *Car.* 2. *c.* 15. *ſect.* 2. it is enacted, "That it ſhall and may be lawful for any perſon or perſons whatſoever, native or foreigner, freely and without paying any acknowledgment, fee or other gratuity for the ſame, in any place of *England* or *Wales*, privileged or unprivileged, corporate or not corporate, to ſet up and exerciſe the trade, occupation of myſtery of breaking, hickling or dreſſing of hemp or flax; as alſo for making and whitening of thread; as alſo of ſpinning, weaving, making, whitening or bleaching of any ſort of cloth whatſoever made of hemp or flax only: As alſo the trade, occupation or myſtery of making of twine or nets for fiſhery, or of ſtoring of cordage: As alſo the trade, occupation or myſtery of making any ſort of tapeſtry-hangings; any law, ſtatute or uſage to the contrary in any wiſe notwithſtanding."

And by the *ſtat.* 6 & 7 *Will.* 3. *c.* 17. *ſect.* 12. it is enacted, "That if any perſon ſhall be guilty of clipping, coining, counterfeiting, waſhing, filing, or otherwiſe diminiſhing the coin of this realm, and afterwards diſcover two or more perſon or perſons who already have or hereafter ſhall commit any of the ſaid crimes, ſo as two or more of the perſon or perſons diſcovered ſhall be convicted of the ſame, any ſuch diſcoverer ſhall himſelf

ſelf have, and is hereby intitled to, the gracious pardon of his majeſty, his heirs and ſucceſſors, for all ſuch his crimes which he or they have committed at any time or times before ſuch diſcovery made. And if the perſon making ſuch diſcovery be an apprentice, he ſhall be deemed and taken, and is hereby declared a freeman, and ſhall have, and may exerciſe any lawful trade, poſſeſſion, or myſtery, with all liberties and privileges, and in as full and ample a manner, as if the ſaid perſon had ſerved the full time of his apprenticeſhip; any law, ſtatute, cuſtom, or ordinance, to the contrary notwithſtanding."

Stat. 3 *Geo.* 3. *c.* 8. [*A. D.* 1763, *intituled*,] "An act to enable ſuch officers, mariners, and ſoldiers, as have been in the land or ſea-ſervice, or in the marines, ſince the twenty-ſecond year of his late majeſty king *George* the ſecond, to exerciſe trades." 3 Geo. 3. c. 8.

"Whereas there have been, and are, divers officers, mariners, ſoldiers, and marines, who have ſerved his late majeſty, or his preſent majeſty, in the late wars by ſea and land, ſome of which are men that uſed trades, others that were apprentices to trades, who had not ſerved out their times, and others, who by their own induſtry, have made themſelves apt and fit for trades: Many of which, the wars being now ended, would willingly employ themſelves in thoſe trades which they were formerly accuſtomed to, or which they are apt or able to follow and make uſe of, for the getting their living by their own labour, but are or may be hindered from exerciſing thoſe trades in certain cities and corporations, and other places within this kingdom, becauſe of certain by-laws and cuſtoms of thoſe places, and of the ſtatute made in the fifth year of queen *Elizabeth*, prohibiting the uſe of certain trades by any perſon who hath not ſerved as an apprentice to ſuch trade for the ſpace of ſeven years: For remedy whereof be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all ſuch officers, mariners, ſoldiers, and marines, who have been at any time employed in the ſervice of his late majeſty, or of his preſent majeſty, ſince the twenty-ninth day of *November* in the year of our Lord one thouſand ſeven hundred and forty-eight, and have not ſince deſerted the ſaid ſervice; and alſo the wives and children of ſuch officers, mariners, ſoldiers, and marines, may ſet up and exerciſe ſuch trades as they are apt and able for, in any town or place within the kingdoms of *Great Britain* and *Ireland*, without any let, ſuit or moleſtation, of any perſon or perſons whatſoever, for or by reaſon of the uſing of ſuch trade; nor ſhall ſuch officers, mariners, ſoldiers, or marines, or their wives or children, during the time they ſhall exerciſe ſuch trades, be removeable from ſuch reſpective place or places, to his, her, or their laſt legal place of ſettlement, by virtue of any law now in being relative to the ſettlement of the poor, until ſuch perſon or perſons ſhall become actually chargeable to ſuch pariſh or place; and if any ſuch officer or officers, mariner or mariners, ſoldier or ſoldiers,

Preamble.

5 Eliz.

Officers, mariners, ſoldiers, and marines, who have been at any time employed in the king's ſervice ſince 29 Nov. 1748, and have not ſince deſerted, and alſo the wives and children of ſuch, are authorized to ſet up and exerciſe trades within any parts of Great Britain or

Ireland, without lett;

and without being liable to be removed from thence to their laſt legal place of ſettlement, until they become actually chargeable to the pariſh;

and if ſued, upon pleading the general iſſue, they ſhall be acquitted,

and be paid double coſts of ſuit.

ſoldiers, marine or marines, or the wife or child of any ſuch officer, mariner, ſoldier, or marine, who ſhall be ſued, impleaded, or indicted in any court whatſoever, within this kingdom, for uſing or exerciſing any ſuch trades as aforeſaid, then the ſaid officer or officers, mariner or mariners, ſoldier or ſoldiers, marine or marines, or any wife or child of any ſuch officer, mariner, ſoldier, or marine, making it appear to the ſame court, where they are ſo ſued, impleaded, or indicted, that they have ſerved his late or preſent majeſty as aforeſaid, or that he, ſhe, or they, is or are the wife or wives, child or children, of ſuch officer or officers, mariner or mariners, ſoldier or ſoldiers, marine or marines, who ſhall have ſo ſerved his late or preſent majeſty, ſhall, upon the general iſſue pleaded, be found not guilty in any plaint, bill, information or indictment, exhibited againſt them; and ſuch perſons who notwithſtanding this act, ſhall proſecute the ſaid ſuit, by bill, plaint, information, or indictment, and ſhall have a verdict paſs againſt him, or become nonſuit therein, or diſcontinue their ſaid ſuit, ſuch perſon or perſons ſhall pay unto ſuch officer or officers, mariner or mariners, ſoldier or ſoldiers, marine or marines, or the wife or child of ſuch officer, mariner, ſoldier, or marine, reſpectively, double coſts of ſuit, to be recovered as any other coſts at common law may be recovered; and all judges and jurors, before whom any ſuch ſuit, information, or indictment, ſhall be brought, and all other perſons whatſoever, are to take notice of this preſent act, and ſhall conform themſelves thereto; any ſtatute, law, ordinance, cuſtom, or proviſion, to the contrary in any wiſe notwithſtanding."

Where any two juſtices for the county or place, where they ſhall ſo ſet up, ſummon them to give evidence as to the place of their laſt legal ſettlement,

they ſhall make oath accordingly;

an atteſted copy whereof ſhall be given them, which ſhall be admitted as evidence at the quarter ſeſſions;

" 2. And be it further enacted by the authority aforeſaid, That it ſhall and may be lawful for any two or more juſtices of the peace for the county, town, or place, where any ſuch officer, mariner, ſoldier, or marine, ſhall ſet up and exerciſe any trade as aforeſaid, to cauſe ſuch officer, mariner, ſoldier, or marine, to be ſummoned before them in the town or place where ſuch officer, mariner, ſoldier, or marine, ſhall ſet up and exerciſe ſuch trade as aforeſaid, in order to make oath of the place of his laſt legal ſettlement (which oath the ſaid juſtices are hereby impowered to adminiſter) and ſuch officer, mariner, ſoldier, or marine, are hereby directed to obey ſuch ſummons, and to make oath accordingly; and ſuch juſtices are hereby required to give an atteſted copy of ſuch affidavit ſo made before them, to the perſon making the ſame, in order that he may produce it when required; which atteſted copy ſhall at any time be admitted as evidence as to ſuch laſt legal ſettlement, before any of his majeſty's juſtices of the peace at any general or quarter ſeſſions of the peace."

and if ſummoned again, they ſhall not be obliged to take a freſh oath, but produce the former, or leave a copy thereof.

" 3. Provided always, That in caſe any ſuch officer, mariner, ſoldier, or marine, ſhall again be ſummoned to make oath as aforeſaid, then on ſuch atteſted copy of the oath by him formerly taken being produced by him or by any other perſon on his behalf, ſuch officer, mariner, ſoldier, or marine, ſhall not be obliged to take any other or further oath with regard to his legal ſettlement, but ſhall have a copy of ſuch atteſted copy of his examination, if required."

" 4. Pro-

" 4. Provided always, That this act shall not in any wise be prejudicial to the privileges of the universities of *Cambridge* and *Oxford*, or either of them; or extend to give liberty to any person to set up the trade of a vintner, or to sell any wine or other liquors within the said universities, without licence first had and obtained from the vice-chancellor of the same respectively."

Privileges of the two universities reserved.

Manual occupation] [*See page 59. sect.* 31.] And yet he who bakes, brews, makes candles, *&c.* for his own use, is not said in law to use any manual occupation: And upon this branch, and much to this purpose, a judgment was given in the court of Exchequer, and afterwards affirmed in a writ of error in the Exchequer-chamber, *Mich. 6 Jac.* and the case, worthy to be known, was such. *Taylor* did inform in the Exchequer on the *stat.* of *5 Eliz. c. tam pro dom. rege, quam pro seipso*, against *Shoile*, that he had exercised the art and mystery of a brewer, *&c.* for divers months, against the said act, and averred, that the defendant did not use or exercise the art or mystery of a brewer at the time of the making of the said act, nor had been an apprentice for seven years at the least, in the art and mystery of a brewer, according to the said act, *&c.* The defendant demurred in law upon the information, and judgment was given against him by the barons at the Exchequer, on which judgment a writ of error was brought in the Exchequer-chamber, and *Mich. 6 Jac. regis*, the matter was argued by counsel on both sides; and two errors were assigned, one that a brewer is not within the said branch of the said act, on which the information is conceived, for the words are, *That it shall not be lawful to any person or persons, other than such as now do lawfully use or exercise any art, mystery, or manual occupation, to set up, use or exercise any art, mystery or occupation, except he shall have been brought up therein seven years at the least as an apprentice:* And it was said, that the trade of a brewer is not any art, mystery, or manual occupation within the said branch, because it is easily and presently learned, and need not have seven years apprenticeship to be instructed in it, for every housewife in the country can brew; and the *stat.* of 22 *H.* 8. *c.* 13. declares, that a brewer is not a handicraft artificer. The other error was, that the said averment was not sufficient, for the averment ought to be as general as the exception in the statute is, That the defendant did not use any art, mystery, or occupation at the time of the making of the act; for by their pretence, if he exercised any art, mystery, or manual occupation then, as a taylor, carpenter, *&c.* he might now use any other art, mystery, or manual occupation whatsoever. As to the first, it was resolved, That the art of a brewer to keep a common brew-house to sell beer to any other, is an art, mystery, and manual occupation within the said branch of the act; for in the beginning of the act, it is enacted, *That no person shall retain for less time than a whole year in any of the sciences, crafts, mysteries, or arts of clothing*, &c. *bakers, brewers*, &c. *cooks*, &c. So that by the judgment of that very parliament, the trade of a brewer is an art and mystery: Which words are in the said branch upon which the said information is grounded. And it was resolved, That he who brews, bakes, *&c.* for his own use, doth not use or exer-

The art of a brewer is an art, mystery, and manual occupation within the said branches of the act. 8 Co. Rep. 129. Mich. 6 Jac. 1. Taylor v. Shoile.

ciſe any art, myſtery, or manual occupation againſt the ſaid act, for the ſaid words imply, that he ſo uſe or exerciſe the art, myſtery, or manual occupation, that by ſale of the commodities of his occupation he get his living, but to ſay, that it is not any art, myſtery, or manual occupation, becauſe every houſewife brews for her private uſe, ſo likewiſe ſhe bakes and dreſſes meat, *&c.* and yet none can keep a common bake-houſe, or cook's ſhop to ſell to others, unleſs he has been an apprentice, *&c.* according to the ſaid act, for they are expreſsly named alſo in the act, as arts and myſteries: And the act of the 22 *H.* 8. explains, That a brewer, baker, chirurgeon, or ſcrivener alien, are no handicraftſmen within the purview and intention of certain penal laws; but that doth not prove that they are not arts or myſteries; for art or myſtery is more general than handicraft, for that is reſtrained to manufactures, but not within the penalty of the ſaid ſtatutes; and it is no queſtion, that in truth they all are arts, myſteries, or manual occupations. As to the ſecond it was reſolved, that the intent of the act was, That none ſhould take upon him any art, myſtery, or manual occupation, but ſuch in which he had knowledge. And therefore the ſtatute intended, that he who uſed any art, myſtery, or manual occupation at the time of the ſaid act, might uſe the ſame art or myſtery; for *quod quiſque norit in hoc ſe exerceat*; and the words of the ſaid branch are, *As now do lawfully uſe*, &c. And it was ſaid, that it was very neceſſary that brewers ſhould have ſkill and knowledge in brewing good and wholeſome beer, for that doth much conduce to mens health. And ſo the firſt judgment was affirmed.

Exerciſing a trade by others is within the ſtatute 5 Eliz. 2 Salk. 610. Trin. 3 W. & M. Hobbs qui tam v. Young.

To ſet up, occupy, uſe or exerciſe,] [*See page 59. ſect.* 31.] Debt on 5 *Eliz.* for uſing the trade of a clothworker, not being brought up an apprentice; upon *nil debet* the jury found, that the defendant was a *Turkey* merchant, and exported woollen manufactures into *Turkey*, and that he employed clothiers who had ſerved apprenticeſhips to work the cloths in his own houſe, at his own charge and with his own materials, which he ſent into *Turkey* as merchandize, but that the defendant never ſerved an apprenticeſhip. *Per cur.* 1ſt, The defendant is the trader in this caſe, and the perſon that exerciſes the trade, becauſe he employs the reſt, who work but as his ſervants, and the loſs and gain is to be his. 2dly, This is a trading within the ſtatute; becauſe the cloth is not confined to the uſe of his own family, but vended out for the ſake of commerce; and whether the utterance be in *England* or *Turkey*, is not material. 3dly, That he that hath not ſerved an apprenticeſhip is by this ſtatute reſtrained to work as a trader, *either by himſelf or others*; for the intent of this act is to annex the benefit of trade to ſuch as underwent the hardſhip of learning it, thereby to encourage labour in youth: And few would undergo the trouble of being apprentices, if they might employ others to work for them. 4thly, This is a negative ſtatute, and no one ſhall exerciſe a trade againſt it, unleſs by virtue of a cuſtom, as the widows of tradeſmen, who by cuſtom carry on the trade of their huſbands, which the court held not within the ſtatute.

Broderick

Broderick moved to quaſh an indictment on 5 *Eliz. c.* 4. for uſing the trade of a fellmonger, not having been an apprentice ſeven years; he urged, that this was a buſineſs required no ſkill, for it was only to pull the wool from the ſkin. He cited 1 *Cro.* 499. information for exerciſing the trade of a hemp-dreſſer reverſed. One *Paſ.* 4 *Jac.* 1. for exerciſing the trade of a woolcomber, quaſhed. Of a pippingmonger reverſed. *Sed per Holt.* C. J. If in the indictment it be averred to be a trade at the time of making the ſtatute we will not quaſh it; for whether it was a trade then or no, or whether any ſkill be required to the exerciſe of it, is matter of fact proper for the trial of a jury: and there are many trades within the general words and equity of that act, beſides thoſe that are mentioned therein. The caſe of a coſtermonger is not yet determined, and the caſe of an upholſterer, 2 *Bulſt.* 186. is not law. The court would not quaſh it.

Indictment for exerciſing the trade of a fellmonger contrary to 5 Eliz; not quaſhed, becauſe averred to be a trade at the time of making the act. 2 Salk. 611. 11 W. 3. Rex v. Paris. Slaughter.

Indictment for uſing the trade of a merchant-taylor contrary to the ſtatute 5 *Eliz.* Serjeant *Broderick* moved to quaſh it, becauſe it is not a trade within the ſtatute. Quaſhed *niſi.* Some days after Mr. *Eyre* moved to quaſh an indictment againſt *Corniſh*, for uſing the trade of a ſeamſtreſs, not having ſerved as an apprentice; and the court refuſed, becauſe it was ſet forth in the indictment to be a trade in *England* at the time of making the act; wherein the words are, *any craft*, *myſtery*, or *occupation* now uſed. So that if this trade of a ſeamſtreſs be not within the act, the defendant would have the advantage of it upon the trial. But as to *Harper*'s caſe, which Mr. *Eyre* put them in mind of, the court ſeemed to think a merchant-taylor was nonſenſe and unintelligible; they did not know what a merchant-taylor meant, and ſo it differed. It is a good exception that it is not averred in the indictment, that the trade therein mentioned was a trade at the time of making the ſtatute. *Domina regina* verſus *Corniſh*, *eodem termino.*

Where the trade is averred to be a trade at the time of the act, the court cannot intend it within the act. 2 Salk. 611. Trin. 4 Ann. Regina v. Harper.

This was an action of debt for a penalty on 5 *Eliz. c.* 4. for exerciſing the *trade of a* brewer, without having ſerved an apprenticeſhip. In the declaration there were two counts. To the former "*nil debet*" was pleaded: and there was a general verdict for the defendant, (*viz.* "that the defendant does not owe, *&c.*") But on the ſecond count there was a ſpecial verdict: which was to the following effect, *viz.* that the defendant *Chaſe* and one *Coxe*, were, and have been, during all the time charged in this count, partners in the trade, and that the trade was carried on, and had been for four years carried on, in their *joint* names; that *Coxe* did ſerve an apprenticeſhip, *&c.* but *Chaſe* never did; and that *Coxe is a working brewer*, and was paid a ſalary for his labour; which ſalary was always deducted and allowed to him, *previous* to a diviſion of the profits; and the entries at the Exciſe-office were in their *joint* names: but that the defendant *John Chaſe*, never *exerciſed the trade* himſelf; (which was wholly managed and carried on by *Coxe*,) but *only ſhared the profits*, and *ſtood the riſques* of the partnerſhip. And they find it to be a trade within 5 *Eliz. c.* 4. Queſtion, on 5 *Eliz. c.* 4. *ſect.* 31. "Whether the defendant *John Chaſe* is within the act, upon this ſpecial finding." Mr. *Morton pro*

A perſon, who is not qualified to exerciſe a trade himſelf, by having ſerved an apprenticeſhip, entering into partnerſhip with a qualified partner, and only ſharing the profits and ſtanding the riſque of the partnerſhip, without ever exerciſing or interfering in the trade himſelf perſonally, is not

within the prohibitory penal act of 5 Eliz. c. 4. ſo as to be liable to the penalties of it. 1 Bur. Rep. 1, 9. Mich. 30 Geo. 2. (1756) Raynard v. Chaſe.

Quer. This attempt to evade the force of the act, by the ſcheme of a partnerſhip *with a qualified* trader, would entirely fruſtrate the *intention*, and is directly contrary to the *words* of the act. The ſhort of this caſe is,——*Chaſe not* being himſelf *qualified*, takes a partner *who* is *qualified*: which qualified partner is the only *acting* perſon in carrying on the trade; and *Chaſe never interfered* in it. There was the like point before the court in *P.* 18 *G.* 2. *B. R. Rex* v. *Driffield.* But, per *Deniſon* and *Foſter* juſtices, that caſe was never determined: it went off upon an objection to the juriſdiction. *Morton*:——But the lord chief juſtice *Lee* then ſaid, "that he had never known a perſon exempted from the ſtatute, who had not ſerved an apprenticeſhip."——And as to his not interfering in the trade, the caſe of *Hobbs, qui tam, &c.* verſ. *Young*, reported in 2 *Salk.* 610. and in *Carthew* 162. and in 3 *Mod.* 313. is a determination in point, and not to be diſtinguiſhed from the preſent caſe. Therefore he prayed judgment for the plaintiff.

Mr. *Biſhop contra, pro* defendant, ſaid, he would firſt conſider how this matter ſtood *before the ſtatute*, with regard to the free and unlimited right that every man naturally and legally had of exerciſing whatever trade he pleaſed; 2dly, The *conſtructions* that have been *favourably* made upon it, in extenſion of the qualifications to exerciſe trade; and 3dly, Diſtinguiſh this caſe from the caſes cited. And firſt, the liberty of trade is a natural and common-law right; and was long unreſtrained. The ſtatute of 37 *E.* 3. *c.* 5. which firſt reſtrained it, was very ſoon *repealed* by 38 *Ed.* 3. *c.* 2. And lord *Coke* in 4 *Inſt.* 31. ſays, "that ſuch acts of parliament never live long." He cited the caſe in 2 *Bulſtr.* 186. *Dominus Rex and Allen plaintiffs* againſt *Tooley, defendant*, as an authority for him; though the court did not indeed formally pronounce any final judgment therein. And he alſo cited 11 *Co.* 53. the caſe of the taylors of *Ipſwich.* Secondly, The before-mentioned caſe in 2 *Bulſt.* 186. *The King and Allen* v. *Tooley*, proves the conſtruction to have been favourable, *Jenk. Cent. caſe* 15. *p.* 284. "A private brewer is not within the ſtatute." *Keilwey* 96. *pl.* 6. proves that the ſtatute ought to be taken ſtrictly; being penal, and in derogation of the common law. And judges have diſpenſed with the rigour of it: as in *Froth's* caſe, 1 *Salk.* 67. where ſeven years apprenticeſhip beyond ſea, though without binding, was holden ſufficient. So *Queen* v. *Maddox*, 2 *Salk.* 613. S. P. accordingly: and the court there call this ſtatute of the 5th of *Eliz.* a hard law. *Comberb.* 254. *Rex* v. *Collor*, per *Eyre* juſtice, one brother living with another ſeven years (at the trade of a tallow-chandler) though not bound, may ſet up the trade. 1 *Mod.* 26. *pl.* 69. *Dominus Rex* v. *Tarnith*, proves too that this ſtatute ought not to be extended further than neceſſity requires. Now it is not found by the preſent ſpecial verdict in the affirmative, "that this man had occupied, uſed, and exerciſed the trade:" but it is found (on the contrary) negatively; "that he has not *interfered* in it; but it was wholly carried on by *Coxe.*" And *Hob.* 298. ſays the rule is, "that affirmatives in ſtatutes that introduce new laws, imply a negative, *&c.*" However here is an *expreſs* negative. Thirdly, with regard to the caſes cited.——

As

As to *Rex* v. *Driffield*, whatever was found in the affirmative in that caſe, is found in the negative here. And as to the caſe of *Hobbs* v. *Young*, there was *no partner* ſkilful in the trade; but only *ſervants:* whereas here is a ſkilful partner to conduct it; and the ſervants are employed and ſet to work by *his partner*, who is ſkilful, and are *not* employed and ſet on work *by* the defendant. Then he added, (4thly,) ſome arguments *ab inconvenienti*. *Firſt*, that this will affect all great undertakings: for it ſeldom happens in ſuch great undertakings, that all the partners are duly qualified, in ſtrictneſs. So likewiſe, it would affect all caſes where *infants* and *truſtees* are intituled to ſhares of profitable trades. So, where creditors have ſhares in them. And *apprenticeſhips*, in *great breweries*, are not, in fact, uſual or cuſtomary. Mr. *Morton*, in reply, premiſed that the rule of conſtruction upon this act muſt be *uniform*, with regard to *all* the trades within it: and *breweries* cannot be diſtinguiſhed from the reſt. In anſwer to Mr. *Biſhop's* argument, he obſerved, 1ſt, it is of no importance what was the right before the ſtatute: the ſtatute was made *expreſsly*, to reſtrain ſuch rights in future, for the good of the public. 2dly, He ſaid, he did not want to *extend* this law: this caſe is fully and completely *within* it, without ſtraining it at all. And the conſtructions that Mr. *Biſhop* calls favourable, in the inſtances which he has cited, are no more than juſt and reaſonable upon the circumſtances of the reſpective caſes in which they were made. 3dly, As to the negative *finding* in the preſent caſe, it amounts to no more, than "that this man did *not mind his buſineſs*," (which the other partner did.) And as to ſetting to work, it is plain that *Goxe* is ſet to work by *Chaſe*; and, *virtually*, he ſets all the ſervants to work. Indeed, *Coxe* is here both a journeyman and a partner to *Chaſe:* for *Chaſe* pays him as a journeyman; and, beſides that, gives him a ſhare of the profits. And my lord chief juſtice *Holt*'s opinion in the caſe of *Hobbs* and *Young* is quite applicable to the preſent caſe. 4thly, He endeavoured to ſhew that the conſtruing this man to be within the penalty of the ſtatute, could not be attended with any ſort of inconvenience. Therefore he prayed judgment for the plaintiff. As this was the firſt argument, it was expected (as of courſe) that it would be argued again: but lord *Mansfield* gave his opinion immediately to the following effect.

Lord *Mansfield*: Where we have no doubt, we ought not to put the parties to the delay and expence of a farther argument, nor leave other perſons, who may be intereſted in the determination of a point ſo general, unneceſſarily under the anxiety of ſuſpence. The defendant is to ſhare the profits with *Coxe*, in moieties, and is liable to the debts of the partnerſhip. But it is *poſitively and expreſsly* found, "That during all the time charged, he never acted in or exerciſed the trade." He was not, by the *terms* of his agreement, to act in the trade. The other partner was to do the whole, and had a particular ſalary on that account. It is not found that either *Coxe* or any ſervant under him was ſet to work by *Chaſe*; nor that *Chaſe* did any *act* whatever of exerciſing the trade: He was only concerned in the *profits*. Now though this may be, to ſome *purpoſes*, exerciſing a trade, in reſpect of third perſons who deal with the partnerſhip as creditors, and within the meaning of the *ſtatutes concerning bankrupts*; yet the preſent que-

ſtion is, " Whether it be exerciſing a trade, contrary to this act." I think Mr. *Biſhop* has laid his foundation right, againſt extending the penal prohibition beyond the expreſs letter of the ſtatute. 1ſt, This is a *penal* law; 2dly, It is in *reſtraint of natural* right; and, 3dly, It is *contrary to the general* right given by the *common law* of this kingdom. I will add, 4thly, The *policy*, upon which the act was made, is, from *experience*, become doubtful. Bad and unſkilful workmen are rarely proſecuted. This act was made early in the reign of queen *Elizabeth*. Afterwards, when the great number of manufacturers, who took refuge in *England* from the duke *D'Alva*'s perſecution, had brought trade and commerce with them, and enlarged our notions; the reſtraint introduced by this law was thought ſo *unfavourable*, that in 33 *Eliz.* in the Exchequer, 4 *Leon.* 9. *pl.* 39. it was conſtrued away: For it was holden clearly by the judges, in that caſe, (which conſtruction, however, I take *not* to be law *now*,) that " If one hath been an apprentice for ſeven years at any one trade mentioned within the ſaid ſtatute, he may exerciſe any *trade named in it*, though he hath *not* been an apprentice to it." All theſe obſervations only ſhew, " That this act, as to what inforces the *penalty* of it, ought to be taken *ſtrictly*." And accordingly, the conſtructions made by former judges have been favourable to the qualifications of the perſons attacked for exerciſing the trade even where they have not *actually* ſerved apprenticeſhips. They have, by a liberal interpretation, *extended the qualifications* for exerciſing the trade, *much beyond* the letter of the act; and have confined the *penalty and prohibition* to caſes *preciſely within* the expreſs letter. Let us conſider whether the *preſent* caſe be within the *letter*, or even the *meaning* of this act. The *general policy* of the act was to have trades carried on by perſons who had *ſkill* in them. Now here the *perſonal* ſkill of the defendant makes no *real* difference in the caſe. For the perſon who *is ſkilful*, *acts every* thing, and *receives no direction* from this man: He neither did, nor was to interfere.

The caſe of *Hobbs* and *Young* (*See p.* 68.) is not parallel. There, the defendant, a *ſingle* man, directed the whole trade; was the maſter, and *directed* all the ſervants. *As between maſter* and *ſervant*, no doubt, it is the maſter, who carries on the trade, and *not* the *ſervant*. But in *Hobbs* and *Young* there was *no partnerſhip*; nor (what is the diſtinguiſhing character of the preſent caſe) a *mere naked* ſharing of the profits, and riſquing a proportion of the loſs; without his acting or directing at all, in any manner whatſoever. In many conſiderable undertakings, it is abſolutely neceſſary to take in perſons as partners, to ſhare the profits and riſque the loſs. And the general uſage and practice of mankind ought to have weight in determinations of this ſort, affecting trade and commerce, and the manner of carrying them on. It is notorious that many partnerſhips are entered into upon the foundation of one partner contributing induſtry and ſkill, and the other money. Many great breweries, and other trades have been carried on for the benefit of infants and reſiduary legatees, under the direction of the court of Chancery. Now if the plaintiff's conſtruction was to hold, the whole direction and decree of the court of Chancery was contrary to law,

and

and to an expreſs act of parliament. So it is likewiſe practiſed in *other* great trades. The late Mr. *Child* directed his buſineſs of a *banker*, to be carried on for the benefit of his children and other perſons.——Many other inſtances might be mentioned. It would introduce the utmoſt confuſion in affairs of trade and commerce, if this conſtruction ſhould prevail. On the *other* hand, I ſee no inconvenience: it is exactly the ſame thing as to the trade, in every jota, " whether this partner has or has not ſerved an apprenticeſhip." Therefore I think the defendant *not* liable to the *penalty* of 5 *Eliz.* Mr. juſtice *Deniſon* ſaid, that this was a new caſe. For though the caſes of *Rex* v. *Driffield*, and *Adcock* v. *Gell*, were indeed before the court, yet *no opinion* was delivered in either of thoſe caſes. He concurred that it was *not* an *exerciſe* of the trade *within* 5 *Eliz.* The true intent of that act was, that no man ſhould *exerciſe* any of thoſe trades, unleſs he had *ſkill* in them. It has never been extended, by any liberal conſtruction of it, in point of enforcing the *penalty*. And the preſent queſtion is, " Whether this man has *exerciſed* the trade, within the meaning of it, ſo as to be *liable to the* penalty." Now it is here found, " That he *never* did *interfere* in the trade *himſelf*." In the caſe of *Hobbs* v. *Young*, the defendant was the *ſuper-intender* of the work, and *did exerciſe* the trade, without having any ſkill in it. And *this* is the *point in queſtion*, and the principal determination in that caſe of *Hobbs* v. *Young*, whatever elſe might drop from the judges in giving their opinion. But *here* the defendant *never meddles at all*; but leaves *all the management* to a partner, who had ſkill: He himſelf *never acted* in carrying on the trade. It may be ſaid indeed, " That *Chaſe* is liable to the *ſtatutes of bankrupts*." True: But the conſtruction of *thoſe* acts, made for the benefit of the bankrupt's creditors, is very different from the conſtruction of this *prohibitory* and *penal* act, which ought to receive a *ſtrict* conſtruction, in point of extending the *penalty*. Therefore, for theſe reaſons, and thoſe given by the lord Ch. J. he held, " That this was *not* an *exerciſing* the trade *within the act*."

Mr. Juſtice *Foſter* concurred, and ſaid, he had prepared himſelf to give his reaſons *at large:* But as the lord chief juſtice had gone through them ſo fully, and inforced them in ſo clear and ſatisfactory a manner, he would only, *in general*, declare his concurrence. Mr. juſtice *Wilmot* of the ſame opinion. By the court unanimouſly judgment was given for the defendant.

Indictment for exerciſing the occupation of a tanner, not having ſerved an apprenticeſhip for ſeven years therein, is ſufficient without ſpecifying and averring the want of other qualifications

On ſhewing cauſe againſt a rule for quaſhing an indictment on 5 *Eliz.* *c.* 4. *ſect.* 31. for exerciſing the occupation of a tanner, not having ſerved an apprenticeſhip therein for *ſeven* years; Mr. *Sayer*, on the part of the defendant, objected, 1ſt, That though the trade of a tanner was undoubtedly a trade uſed within the realm of *England* at the time of making this act of 5 *Eliz.* yet it was *not meant and intended to be* included *in this prohibitory clauſe*; being at that very time under regulation by *other* ſtatutes (no leſs than ſixteen in number) made for the purpoſe of regulating it; and particularly by 1 *Eliz.* *c.* 9. which allows the uſe of it to apprentices or covenant ſervants brought up in that trade *four* years: And another ſtatute made in the very ſame year with the preſent one, *viz.* 5 *Eliz.* *c.* 8. deſcribes

allowed by ſubſequent ſtatutes, For ſuch other qualifications or exceptions ought to be ſhewn by the defendant. 2 Bur. Rep. 1035-37. Trin. 33 & 34 Geo. 2. Rex v. Pemberton.

ſcribes who may be tanners. So that it cannot be imagined that *this* occupation was ever meant to be included in the prohibition of 5 *Eliz. c.* 4. *ſect.* 31. And though both theſe ſtatutes (of 1 *Eliz. c.* 9. and 5 *Eliz. c.* 8.) are now repealed, yet they are equally an argument to ſhew the conſtruction of the clauſe in queſtion, as if they ſtood unrepealed: And ſo the court conſidered a repealed ſtatute, in conſtruing the unrepealed one of 43 *Eliz. c.* 2. in the caſe of *Rex* v. *Loxdale et al*', *H.* 1757. 30 *G.* 2. *B. R.* 2d objection.—If the trade of a *tanner* was meant to be included in the prohibitory clauſe of 5 *Eliz. c.* 4. *ſect.* 31. yet that ſtatute was, *as to this particular trade or occupation*, repealed by the 5 *Eliz. c.* 8. and 1 *Jac.* 1. *c.* 22. *ſect.* 5. which are *repugnant* to, and conſequently a *virtual repeal* thereof, ſo far as concerns *this* trade. The former is indeed now repealed: But the latter is not: they admit of five *or* ſix other *qualifications* beſides having ſerved an apprenticeſhip for ſeven years; namely, ſuch as *then had tanhouſes* and *uſed* the trade; alſo the *wives* and *ſons* of *tanners* having uſed the myſtery four years; alſo ſuch perſons as ſhould *marry* the wives or daughters, to whom tanhouſes and fats ſhould be left. So that there are now *many other qualifications*, that juſtify uſing the trade, *beſides* that of ſerving a ſeven years apprenticeſhip. 3d objection.—An indictment will not therefore now lie upon 5 *Eliz. c.* 4. *ſect.* 31. *alone* and *generally:* But it ought to ſpecify all thoſe other *qualifications* allowed by the ſubſequent ſtatute; and to ſhew that the party is *not within any of them*; as is done in convictions upon the game acts, and convictions for ſwearing, and upon the act of 8 and 9 *W.* 3. *c.* 26. "For the better preventing counterfeiting the current coin of this kingdom." And for this he cited *Rex* v. *Maurice Jarvis*, *H.* 1757. 30 *G.* 2. (1 *Bur. Rep.* 148, 151.) and *Rex* v. *Sparling*, (*Hil.* 8 *Geo.* 1.) where a conviction for prophane curſing and ſwearing was quaſhed, becauſe it did not alledge, "That the defendant was *not* a ſervant, labourer, common ſoldier, or ſailor." This indictment is upon a ſtatute not favoured: and the caſe is the harder upon the defendant, and the more oppreſſive, for that he is under another indictment on 1 *Jac.* 1. *c.* 22. Mr. *Norton*, for the proſecutor, having been heard in anſwer to the objections, and having made the proper diſtinctions between the caſes cited and the caſe now in queſtion; the court were unanimouſly of opinion, that *whatever licence* might be given by any ſtatute *ſubſequent* to 5 *Eliz. c.* 4. to perſons who had not ſerved a ſeven years apprenticeſhip, to exerciſe the trade of a tanner under certain *other qualifications* therein deſcribed; yet, as the trade of a tanner was clearly a trade *uſed* at the time of making the 5 *Eliz. c.* 4. (and ſeems acknowledged even by 1 *Jac.* 1. *c.* 22. *ſect.* 5. to be *included* in 5 *Eliz. c.* 4.) It is *not neceſſary*, in an indictment *upon* 5 *Eliz. c.* 4. *ſect.* 31. for having uſed this trade without having ſerved ſuch apprenticeſhip, to *aver* the *want of the* other *qualifications*, which by the *ſubſequent* ſtatute intitle a perſon ſo qualified, to uſe the trade: But ſuch *other* qualifications or exceptions muſt be ſhewn by the defendant, by way of excuſe, either by *plea* or in *evidence*. It is enough for the proſecutor, to bring the caſe within the general purview of the ſtatute *upon which* the indictment is founded; if that ſtatute has *general*

prohibitory

prohibitory words in it. For where an indictment is brought *upon* a ſtatute which has *general prohibitory words* in it, it is ſufficient to charge the offence *generally* in the words of the ſtatute: And if a *ſubſequent ſtatute*, or (as Mr. juſtice *Foſter* and Mr. juſtice *Wilmot*, who ſpoke after lord *Manſfield*, and Mr. juſtice *Deniſon*, added, even a clauſe of *exception* contained in the *ſame* ſtatute,) excuſes perſons under ſuch and ſuch circumſtances, or gives licence to perſons ſo and ſo qualified, as to *excuſe* or *except* them of the general prohibitory words, that muſt come *by way of plea, or evidence*, "That the party is not within ſuch general prohibition, but *excepted* out of it." Indeed, where the words of a ſtatute are deſcriptive of the *Nature* of the offence, or the *purview* of the ſtatute, or neceſſary to give a *ſummary* juriſdiction, *there* it is neceſſary to ſpecify in the particular words of ſuch ſtatute. In the ſtatute to prevent counterfeiting the coin (8 and 9 *W.* 3. *c.* 26.) it is the purview of the ſtatute; not a general prohibition. 'Tis deſcription — "Any ſmith, engraver, founder, or other perſon or perſons whatſoever, other than and except the perſons employed in or for his majeſty's mint, &c. *N. B.* Mr. juſtice *Foſter* ſaid, he believed there were no leſs than a hundred trades mentioned in other clauſes of 5 *Eliz. c.* 4. And that he had once taken the pains to extract them, and range them alphabetically. *Per cur.* unanimouſly, the rule to ſhew cauſe why the indictment ſhould not be quaſhed, was diſcharged.

Any craft, myſtery or occupation, now uſed] [*See page* 59. *ſect.* 31.] That is, on the 12th *Jan.* 1562, when that parliament began; and this reſtraint ſhall not extend any further, than the words do expreſsly direct, and therefore not to new arts and miſteries ſince invented. 1 *Rol. Rep.* 10. 1 *Vent.* 326, 346.

Within the realm of England or Wales.] [*See page* 59. *ſect.* 31.] In an indictment for excerciſing the trade of a *Salter* (which was held well, though not mentioned in the ſtatute 5 *Eliz. c.* 4. 1 *Lev.* 243. 1 *Sid.* 367. 2 *Keb.* 582) the ſtile of the king was *Magnae Britanniae*; and the trade laid to be exerciſed at the time of the ſtatute *infra hoc regnum* muſt refer to *Magnaæ Britanniaæ*, whereas by the words of the ſtatute it muſt be uſed in *England*; and for this fault the indictment was quaſhed. And ſo was a former indictment, *Rex v. Pariſh*, *Trin.* 13 *Geo.* 1.

Indictment for uſing a trade uſed in Great Britain at the time of the ſtat. 5 Eliz. quaſhed. 2 Stran. 788. Mich. 1 Geo. 2. Rex v. Liſter.

Mr. *Yates* moved to quaſh an indictment for exerciſing the trade of a baker, the defendant not having ſerved a legal apprenticeſhip. The exception he took to it was, that the trade was not laid to be uſed *infra regnum Angliæ* at the time of the act. The court ſaid, the trade of a baker was within the words of the act; and no averment of the trade's being uſed at the time of the act is neceſſary, but where the trade only falls within the general concluſion of the clauſe at the laſt.

What ſhall be ſaid to be a good indictment for exerciſing a trade without having ſerved an apprenticeſhip, 1 Barnardiſt. 277. Hil. 3 Geo. 2. The king and Munroe.

Except he ſhall have been brought up therein ſeven years.] [*See page* 59. *Sect.* 31.] Indictment for uſing the trade of a taylor, not having ſerved an apprenticeſhip ſeven years, was quaſhed, becauſe only ſaid, not having ſerved as an

Service of apprenticeſhip

beyond ſea, ſufficient to enable him to uſe the trade in England. 1 Salk. 67. Paſch. 11 Will. 3. The King v. Fox.

apprentice *infra regnum Angliæ aut William*; for it may be he did ſo beyond ſea; and if it were any where, it ſuffices.

Following a trade for 7 years without binding ſufficient. 2 Salk. 613. Eaſt. 5 Ann. Regina v. Maddox.

As an apprentice] [*See page* 59. *Sect.* 3.] Upon indictments on the ſtatute 5 *Eliz.* in evidence we allow following trade for ſeven years to be ſufficient, this being a hard law.

Evidence of having exerciſed a trade, without having ſerved as an apprentice, not ſufficient. 1 Barnadiſt. Rep. 367. Trin. 3. Geo. 2. The king and Morrice.

In an indictment upon the ſtatute of 5 *Eliz.* for exerciſing the trade of a *Grocer*, without having ſerved a legal apprenticeſhip; the defendant offered to give evidence of his having exerciſed this trade for ſeven years, as being matter *tantamount* to his having ſerved an apprenticeſhip for that time. Chief juſtice *Eyres* did allow, that the caſe had gone ſo far as to allow a wife's living in the ſhop with her huſband for ſeven years to be equivalent to an apprenticeſhip; but thought the preſent caſe not ſtrong enough to comply with the meaning of the ſtatute. Accordingly the evidence was diſallowed.

3 Keb. 400. Mich. 26 Car. 2. King and Moor.

Shall or will become a journeyman.] The defendant was indicted for uſing the trade of a weaver, not having ſerved as an apprentice ſeven years; the evidence was, he ſerved ſix as an apprentice, and had ſince as journeyman in the ſame trade worked above that time: And by the court the ſerving of ſeven years is ſufficient either way; and the defendant was found not guilty.

1 Black. Comment. 415.

This law, (*viz. Eliz. c.* 4.) with regard to the excluſive part of it, has by turns been looked upon as a hard law, or as a beneficial one, according to the prevailing humour of the times: which has occaſioned a great variety of reſolutions in the courts of law concerning it; and attempts have been frequently made for its repeal, though hitherto without ſucceſs. At common law every man might uſe what trade he pleaſed, but this ſtatute reſtrains that liberty to ſuch as have ſerved as apprentices: the adverſaries to which proviſion ſay, that all reſtrictions (which tend to introduce monopolies) are pernicious to trade; the advocates for it, alledge that unſkilfulneſs in trades is equally detrimental to the public, as monopolies. This reaſon indeed only extends to ſuch trades, in the exerciſe whereof ſkill is required: but another of their arguments goes much farther; *viz.* that apprenticeſhips are uſeful to the commonwealth, by employing of youth, and learning them to be early induſtrious, but that no one would be induced to undergo a ſeven years ſervitude, if others, though equally ſkilful, were allowed the ſame advantages without having undergone the ſame diſcipline: and in this there ſeems to be much reaſon. However, the reſolutions of the courts have in general rather confined than extended the reſtriction. No trades are held to be within the ſtatute, but ſuch as were in being at the making of it: (Lord *Raym.* 514) for trading in a country village, apprenticeſhips are not requiſite (1 *vent.* 51. 2 *Keb.* 583.) and following the trade ſeven years is ſufficient without any binding; for the ſtatute only ſays, the perſon muſt ſerve *as* an apprentice, and does not require an actual apprenticeſhip to have exiſted. *Lord Raym.* 1179.

Art, myſtery or ſcience before expreſſed] *ſee page* 60. *Sect.* 35. *For the* arts or trades before expreſſed, *ſee page* 58. *ſect.* 27. *page* 59. *ſect.* 29, 30. and *page* 60, *ſect.* 33. Beſides which, the following arts or trades are mentioned in *ſect.* 3. of this act, namely, clothiers, woollen cloth weavers, tuckers, fullers, clothworkers, ſheremen, dyers, hoſiers, taylors, ſhoemakers, tanners, pewterers, bakers, brewers, glovers, cutlers, ſmiths, farriers, curriers, ſadlers, ſpurriers, turners, cappers, hatmakers or feltmakers, bowyers, fletchers, arrow-head-makers, butchers, cooks or millers.

Power to diſcharge apprentices, extends only to ſuch trades as are ſpecially named in the ſtatute. 2 Salk. 471. Mich. 7 Will. 3. Rex v. Gately.

On a *certiorari* it was moved to quaſh an order of ſeſſions for the diſcharge of one *Edward Green* from his apprenticeſhip to the defendant *Gately*; the fact was, that *Gately* was a mountebank, and being at a place in *Yorkſhire* where he kept a public ſtage, *Green* was by indenture bound apprentice to him in this manner, *viz.* to *Robert Gately*, ſurgeon, to learn the trade he now uſeth; and immediately he went upon the ſtage, and ever ſince continued in the imploy; after which being with his maſter *Gately* in *Middleſex*, he complained to the juſtices that his maſter did not teach him the trade, upon which they diſcharged him: This being done *Green* ſet up the trade of mountebank himſelf. Mr. *Northy* moved to quaſh the order, the juſtices being willing, becauſe they were impoſed upon. 1ſt, He excepted to the form of the order, that they ordered the ſervant to be diſcharged from his maſter, whereas the diſcharge ſhould be mutual. 2dly, Becauſe the *Stat.* 5 *Eliz.* in diſcharging apprentices is confined, and extends only to apprentices mentioned in that clauſe; and there neither ſurgeon nor mountebank is mentioned. And though a ſurgeon may be a trade within the ſtatute, which a man cannot exerciſe without ſerving an apprenticeſhip to, becauſe that clauſe of the ſtatute is general; yet this part of the ſtatute relating to the diſcharge of apprentices, extends only to trades there mentioned. *Per Cur.* As to the firſt, the diſcharge of the ſervant is by conſequence a diſcharge of the maſter; and as to the ſecond, the clauſe of the ſtatute relating to the diſcharge of apprentices, is general, and goes to all manner of apprentices, even to thoſe of merchants, as it was adjudged in *Hawkſworth*'s and *Hillary*'s caſe, 1 *Saund.* 314. But afterwards the court was of opinion, that the power of diſcharging reaches only to the trades mentioned in the ſtatute, among which a ſurgeon is not mentioned; for that though as to the ſerving ſeven years apprenticeſhip, a ſurgeon comes under the general terms of arts and myſteries, yet the power of diſcharging reaches only to the trades particularly mentioned, and this point was not ſtirred in *Hillary*'s caſe; and in *Watkins*'s caſe, 2 *Keb.* 182. *Hale* chief juſtice was of another opinion.

Stat. 5 Eliz. extends only to thoſe trades, mentioned in it. Caſ. of ſetl. and rem. 29. Mich. 12 Ann. Queen and Furneſs.

The juſtices at their ſeſſions diſcharged one *Philip Dallo* from his maſter, a glaſs-bottle-maker. It appeared, there was a blank left for the time he was to ſerve in the counter-part of the deed; but the article the apprentice ſigned was right. Sir *Peter King*: If the indenture be right, which the apprentice ſigned, it is ſufficient. It is for nine years; the law allows no ſuch term. A glaſs-bottle-maker is not one of the trades mentioned in the ſtatute; and it extends but to thoſe, according to the caſe of the King v. *Gately*, in 5 *Mod.* Quaſhed, *niſi*.

Exception

Stat. 5 Eliz. extends to trades not mentioned in it. Lord Raym. 1410. Stran. 663.

Exception was taken to an order of diſcharge, that the juſtices could not diſcharge the apprentice, becauſe the trade to which he was bound, *viz.* a glazier, was not within the ſtatute: but not allowed; for though formerly it was held, that the trade ought to be a trade within the ſtatute, yet the latter reſolutions have been otherwiſe.

Mich 12 G. 1. The King v. Collingbourn.

If any ſuch maſter] [*See page* 60, *ſect.* 35.] That is, any ſuch maſter as is before mentioned in this ſtatute, in the trades therein ſpecified; and the former reſolutions confined the ſenſe of the ſtatute to *ſuch* trades only, but the latter adjudications ſeem to extend the equity thereof to other trades not mentioned in the ſtatute, as in the foregoing inſtances. 1 *Burn* 68.

A man cannot ſend his apprentice beyond ſea, except he be with him. Brownl. 67. Hil. 13 Jac. Coventry v. Windal.

Shall miſuſe or evil intreat his apprentice] See *page* 60. *ſect.* 35. An action of debt brought upon a writing, thereby ſhewing that whereas one *T.* before the ſealing of that writing had become bound to the defendant, to ſtay with him, and ſerve him as an apprentice for the term of eight years, and *Woodall* covenants with the plaintiff, that he before ſuch a day would receive and take the ſaid apprentice for the reſidue of the ſaid term of eight years then to come, and would teach, keep, and employ the ſaid apprentice in his houſe and ſervice in the art and myſtery of chirurgery, which the ſaid *Woodall* then uſed and profeſſed, if the ſaid *T.* ſhould ſo long live, and binds himſelf in twenty pounds. The plaintiff alledged that the defendant did receive the ſaid apprentice in ſervice at *London*, &c. and further ſays, the defendant within the time, to wit, ſuch a day and year, ſent the ſaid apprentice in a certain voyage, in a ſhip called the *Dragon*, from the houſe of the defendant, unto the *Eaſt-Indies*, there to ſtay; and that the apprentice did there arrive, and doth yet there remain, for which he brings his action. The defendant pleads, that he, for the better inſtruction of the apprentice, ſent the apprentice to the *Indies*, to uſe and exerciſe his art; and to this the plaintiff demurs, and judgment for the plaintiff, that the defendant could not ſend the apprentice out of *England*, except himſelf went with him, although it be in his own houſe, and his own proper ſervice; but clearly he might ſend his apprentice to *Cheſter*, or any other part of *England*.

And generally, no man can force his apprentice to go out of the kingdom, except it be ſo expreſly agreed, or that the nature of his apprenticehood doth import it, as if he be bound apprentice to a merchant-adventurer, or a ſailor, or the like. *Hob.* 135.

Apprentice cannot be diſcharged without appearance or ſummons of the maſter. 2 Stran. 1013. Eaſt. 8 Geo 2. Rex v. Eaſman. Uſing him unkindly is not ſufficient.

An order was made at the ſeſſions, for diſcharging an apprentice; the maſter having uſed him unkindly, and refuſing to provide for and entertain him. *Et per curiam*, This order muſt be quaſhed, not for want of an original juriſdicton in the ſeſſions, which has been often allowed them; but becauſe it does not appear the maſter was preſent or ſummoned, which it is plain the act intended he ſhould be. Beſides, there is another fault, which is, that the reaſon given in the order is not a ground for their proceedings; for there is a power to oblige the maſter to receive and entertain him, and uſing him unkindly is too looſe. *Vide Trin.* 12 *Geo.* 1. *Rex* v. *Davie*, *Stran.* 704.

Or

Or the apprentice do not his duty to his maſter] See *page* 60. *ſect.* 35. The ſeſſions, reciting that *Joſeph Higgin* was bound out by indenture as the ſtatute requires, to *John Parks*, and being lame, and having the king's evil, and in the opinion of ſurgeons incurable: therefore the ſeſſions diſcharge the maſter from his apprentice, and four juſtices ſign the order. *Darnall*, ſerjeant, moved to confirm the order, becauſe the maſter cannot now have the end of the binding, which was the ſervice of his apprentice. *Willes* contra. The ſtatute only impowers the juſtices to diſcharge for miſbehaviour, and not for ſickneſs. Beſides, allowing they had a power to diſcharge, yet here they have not executed it as the ſtatute requires; for it is not inrolled; neither is it mentioned to be by a juſtice of the *quorum*. There muſt be four juſtices, one of the *quorum*. Both exceptions to the form were held good. But the court quaſhed the order as to the ſubſtance, for the maſter takes him for better and worſe, and is to provide for him in ſickneſs and in health.

Seſſions cannot diſcharge apprentice on account of ſickneſs. 1 Stran. 99. Trin. 4 G. 1. Rex v. Inhabitants de Hales Owen.

Shall repair unto one juſtice] See *page* 60. *ſect.* 35. The juſtices may force a maſter to take an apprentice, for by the ſtatute the juſtices are to put them out, and therefore muſt be conſtrued to have conſequentially a power to compel the maſter to receive him; and if the maſter turn him away, they can make him refund. 1 *Lev.* 91. Upon an order made at the ſeſſions to diſcharge the apprentice, it did not appear that he applied himſelf firſt to a juſtice of peace, and *Holt* Ch. J. was of opinion the juſtice has power to make an order, and if obeyed by the maſter, then the ſeſſions can have no power: if diſobeyed, then the juſtice upon complaint may bind the maſter to the ſeſſions; and that the ſeſſions have no power otherwiſe. *Turton* and *Gould. cont.* That he could not bind over. *Adjornatur.*

Juſtices may force a maſter to take an apprentice; Per Holt Ch. J. that the ſeſſions have not originally juriſdiction to diſcharge apprentices. 1 Salk. 67. Hil. 11 W. 3. Anon.

Exception was taken to an order for diſcharging an apprentice, 1ſt, That the complaint was made originally at ſeſſions without any previous application to a ſingle juſtice out of ſeſſions. And 2dly, That the juſtices had ordered money to be returned. And now *Holt* Ch. J. delivered the reſolution of the court, That the order was good. If it had been a new queſtion, he ſhould have held a prior application to ſome juſtice out of ſeſſions neceſſary, but after ſo many orders affirmed in this court, which have been otherwiſe, 'tis too late to unſettle that now. As to the ſecond point, he never doubted that, for it is a power conſequential upon their juriſdiction to diſcharge.

Seſſions may diſcharge apprentice by original order, and order money to be returned. 1 Salk. 68. Trin. 13 Will. 3. The King v. Johnſon.

Per Curiam: It has been ſo often reſolved, that the ſeſſions has an original juriſdiction to diſcharge apprentices; that we will not now ſuffer it to be made a queſtion, though it might be doubtful upon the ſtatute itſelf. But in theſe orders it muſt be ſet forth, that the maſter appeared, or was ſummoned, as was held *Paſch.* 10 *Annæ*, *Regina* v. *Rutter*, and for want of this the order was quaſhed.

Seſſions has an original juriſdiction to diſcharge apprentices. 1 Stran. 143. Hil. 5 Geo. 1. Rex v. Gill.

Order of ſeſſions for diſcharging an apprentice was quaſhed, the only reaſon given for the diſcharge being, that the maſter declared in open court he would not take him again. It was agreed to be a point not now to be diſputed,

Apprentice not to be diſcharged without a reaſon. 1 Stran. 704. Trin. 12 G. 1. Rex v. Davies.

diſputed, but that the ſeſſions had an original juriſdiction to diſcharge apprentices.

A. is bound apprentice to B. who is a freeman of the city of London, and A. is bound and inrolled there, then goes and lives with his maſter in Middleſex. The juſtices of the peace for the county may diſcharge him. 1 Stran. 663. Mich. 12 G. 1. Rex v. Collingburn.

Or to the mayor or other head-officer] See *page* 60. *ſect.* 35. This was an order of ſeſſions made at *Hicks's Hall*, for the diſcharge of an apprentice to a freeman of the city of *London*, and who was bound and inrolled there: and the order being removed hither, there were theſe exceptions taken to it. 1. That the apprentice was bound and inrolled in *London*. 2. Not bound by the juſtices. 3. Not a trade within the ſtatute, he being a glazier. To theſe exceptions it was anſwered, that the clauſe of the ſtatute 5 *Eliz. c.* 4. *ſ.* 35. enacts, "That if any maſter ſhall miſuſe his apprentice, he ſhall repair unto one juſtice of the peace where he dwelleth, *&c.*" And *ſect.* 40. provides, "That the cuſtoms of *London* and *Norwich* ſhall be ſaved." *Sect.* 35. has always received a large conſtruction in favour of the juriſdiction of juſtices, for though upon the maſter's complaint no power is given to the juſtices to diſcharge, yet in 24 *Car.* 2. 1 *Saund.* 313. 1 *Vent.* 175. *Hawkſworth* and *Hillarie*'s caſe, it is held, that it was reaſonable, and within the intent of the ſtatute, that an apprentice ſhould be diſcharged from an ill maſter, as well as a maſter ſhould be diſcharged from an ill apprentice; and in 1 *Mod. Wilkins* v. *Edwards* there is the ſame point, and in 1 *Vent.* 174. 1. The firſt and principal queſtion is, whether the court of ſeſſions at *Hicks's Hall* have any juriſdiction to diſcharge an apprentice to a freeman of *London*; or whether he is not to be diſcharged only by the mayor's court? It is found that the apprentice lived with his maſter out of the city of *London*, and within the juriſdiction of the juſtices of *Middleſex*. To this exception it was anſwered, that the ſtatute does not regard where the binding or inrolling is, but gives the juriſdiction expreſly to the juſtices of peace where the maſter lives; and if this did not belong to the juſtices of *Middleſex*, where the maſter lives, there would be a failure of juſtice; for neither the chamberlain, or any other city magiſtrate, have power to compel the maſter's appearance before them. 2. To the ſecond exception it was ſaid, that it was immaterial where the apprentice was bound, for the ſame reaſon. 3. And to the third exception it was ſaid, that formerly indeed it was a doubt, whether the ſtatute did extend to all trades; but of late it hath been ſettled and agreed, that it does. *Salk.* 471. *Palm.* 526. 2 *Keb.* 822. *Rex* v. *Taunton*, *Hil.* 6 *Geo.* The court affirmed the order of diſcharge, and ſaid they would not take away the juriſdiction of the mayor's court, but only give a concurrent juriſdiction to the juſtices of the peace for the county. And it would be very inconvenient, to have apprentices to a freeman of *London*, who are bound there, and who live in diſtant countries, obliged to come up to the mayor's court to get themſelves diſcharged. And the words of the ſtatute are very plain; for they give the juriſdiction to the juſtices where the apprentice lives.

Order for diſcharging apprentice, the maſter not appearing.

And upon his appearance and hearing the matter] See *page* 60. *ſect.* 35. Mr. *Eyre* moved to quaſh an order for the diſcharge of an apprentice: the queſtion aroſe upon the clauſe of the ſtatute, which directs, that upon the appearance of the maſter the apprentice may be diſcharged by four juſtices,

tices, after the next juſtice hath endeavoured to compoſe the matter in difference. In this caſe it was objected, that *Ditton* the maſter was bound over to appear, and did not; and the juſtices have but a limited juriſdiction; and it is expreſly directed by the act, that this diſcharge is to be made on the appearance of the maſter; beſides, there is another remedy to proceed on the recognizance, which is forfeited by not appearing. 2 Salk. 490. Paſ. 13 W. 3. Ditton's caſe.

Per Cur': The act muſt have a reaſonable conſtruction, ſo as not to permit the maſter to take advantage of his own obſtinacy; and it would be very hard, that ſuppoſing the maſter is profligate and runs away, the apprentice ſhall never be diſcharged: afterwards exception was taken, becauſe it appeared upon the face of the order, that *Ditton* was a collar-maker, *& non conſtat* what the trade is, nor that it is within the ſtatute; like *Comfort*'s caſe, where one was bound to a mantuamaker, when there was no ſuch trade within the ſtatute, nor at the time of the ſtatute: and in this caſe it was ſaid, that the juſtices might make the maſter make reſtitution of part of the money, and that it hath been ſo adjudged.

The juſtices at the ſeſſions order an apprentice, who had been ill uſed, and not provided for, to be diſcharged, and that the maſter having received 5*l.* with him, ſhould refund 3*l.* as a further proviſion for him. This was moved to be quaſhed, becauſe the 5 *Eliz. c.* 4. *ſect.* 35. which gives the juſtices power to diſcharge apprentices upon complaint to them, gives them no authority to order any money to be returned. *Per curiam:* it is very hard, that if the maſter miſuſes his apprentice the next day after he is bound, he ſhould pay back nothing if he is diſcharged. It will be an encouragement to maſters, to treat their apprentices ill, but the ſtatute being ſilent, the order muſt be quaſhed. *Salkeld* 68. It was held, that the juſtices might order money to be returned, as a conſequence of their power to diſcharge. *Ibid.* 67, 490. Juſtices cannot order money to be returned on diſcharge of an apprentice. 1 Stran. 69. Mich. 4 Geo. 1 Rex v. Wakefield.

But this doctrine of refunding ſeems to be now eſtabliſhed, as founded in great reaſon, tho' not expreſly mentioned in the act; for the juſtices being authorized to diſcharge according to their diſcretions, when the end of the apprenticeſhip cannot be attained with one perſon, it is but juſtice the maſter ſhould return part of the money he has received with his apprentice, to place him out with a new maſter. Doctrine of refunding eſtabliſhed. 3 Bac. Abr. 550.

It was held, that an order on the maſter to return money is good, tho' it is not averred, that he had any with the apprentice; for the order being to return money is a neceſſary proof of the receipt of it, and the juſtices in their orders are not obliged to ſet forth all the ſteps they take in their proceedings, there being nothing in the act which makes it neceſſary; and there is a known and eſtabliſhed diſtinction between orders and convictions. *id.* Order on the maſter to return money, good. 3 Bac Abr. 550. Trin 7 G. 2. The King v. Amies.

The following is a report of the preceding caſe from a manuſcript.

In *Eaſter Term* 6 *Geo.* 2. Mr. *Strange* moved to quaſh an order of ſeſſion at *Norwich*, for diſcharging an apprentice to a carpenter, upon an exception that this was not a trade within the ſtat. 5 *Eliz.* and he cited *Rex* and *Gately*, *Salk.* 471. where it is held, that the ſeſſions has power to diſcharge apprentices to thoſe trades only, which are mentioned in the ſtatute. Report of the preceding caſe from a MS.

ſtatute. *Page* juſtice: I deny that no trades are within the meaning of that ſtatute but what are mentioned in it. *Strange.* A diſtinction has been always taken between the clauſe in the ſtatute relating to one's ſerving ſeven years, as an apprentice, and that relating to the diſcharging apprentices; for in the firſt caſe the words of the act being general, have been conſtrued to extend to other trades, than what are mentioned in the act. But in the latter caſe, the words are more particular, and have been conſtrued to extend to thoſe trades only, which are mentioned in the act. *Cur':* Shew cauſe. This caſe coming on again in *Trin.* term 6 & 7 *Geo.* 2. Mr. *Forteſcue* ſaid, that four exceptions had been taken to this order. 1ſt, That the trade of a carpenter is not within the act. 2dly, That it does not appear that the maſter had any money of the apprentice's in his hands. 3dly, That the ſeſſions has no power to order the maſter to pay back the money he received from his apprentice. 4thly, That it does not appear there was any appearance, or that the maſter was ſummoned. As to the fourth, the order ſtates that on motion and hearing counſel, *&c.* and that is a reaſonable intendment he did not appear; and this is not like an order made by one juſtice, who muſt ſet forth every thing: for the ſeſſions being a court of record, what is done there will be intended to be reaſonable. In *Salk.* 67. and 490. 'tis adjudged that the maſter's appearance is not neceſſary; and 'tis likewiſe there held that the ſeſſions has a power, to order the maſter to return the money; and there is no occaſion for a ſummons; for the maſter is to take notice of it himſelf. As to the third, the caſes above cited prove the ſeſſions have a juriſdiction.—The juſtices have power to put out an apprentice, and therefore muſt, in reaſon, have a power of making the maſter repay the money, on the diſcharge. The act was made in favour of apprentices; and if the juſtices had no ſuch power, the maſter would be in a better caſe, than before the act. As to the ſecond, tho' it is not expreſly ſaid that the maſter had money, yet the order ſays he ſhall return and pay back the ſum of, *&c.* and that could not be, if he had not received it. As to the firſt, the caſes of *Salk.* 471. 1 *Saund.* 313. 2 *K.* 822. prove that the ſtat. 5 *Eliz.* extends to other trades, beſides what are there mentioned; and that clauſe is penal, and yet extended liberally; and therefore *a fortiori* in this caſe. But the 30th *ſect.* mentions the trade of a carpenter; and *ſect.* 35. gives power to diſcharge *ſuch* an apprentice from his maſter.

Strange. As to the fourth exception, the order does not ſay on hearing counſel on both ſides, or that evidence was given by both parties; ſo that for any thing appears, it might be on one ſide only, like the caſe of motions here; therefore every word in this order may be true, and yet the maſter may not have been heard. 'Tis neceſſary that the maſter appear, for otherwiſe 'tis proceeding *ex parte.* Tho' the juſtices may proceed without appearance, yet they can't till the party has been ſummoned; and ſo was the caſe of *Queen* and *Simpſon.* As to the third exception, that argument can extend only to apprentices bound out by juſtices, which does not appear here; and he might be bound out by his own relations. As to the ſecond exception, 'tis often ſaid that this court will

intend

intend nothing in the caſe of inferior juriſdictions; and this is admitted to be ſo only by implication. As to the firſt exception, he owned the word *ſuch* in the 30th *ſect.* muſt relate to the trade of the carpenter before-mentioned, ſo gave up the exception.

Page juſtice: I think this is a good order. As to the fourth exception, the ſeſſions has no occaſion to ſet it out, for this court will intend it. If he was ſummoned, tho' he did not appear, yet that is ſufficient; and the ſeſſions has no occaſion to ſet out the ſummons. As to the ſecond exception, 'tis plain by intendment that the maſter muſt have received the money, for the words *return and pay back*, neceſſarily import it. As to the third exception, it would be the means of great oppreſſion, if the juſtices had not power to make the maſter return the money; for that might be an encouragement to the maſters, to uſe their apprentices ill, that they might be diſcharged from them; and ſo get more money by taking another.

Probyn juſtice: A carpenter is a trade within the act. The conſequence of the juſtices having a power to diſcharge apprentices is, that they may diſcharge them on ſuch terms as they think proper; and the power of ordering the maſter to return the money, is incident to the power given by the act, to diſcharge the apprentice; for otherwiſe the maſter would receive the benefit by his own wrong.—I am not ſatisfied as to the notice; for it appears that this was an original application to the ſeſſions. In caſes of inferior juriſdictions nothing can be ſupported by intendment; and tho' upon the ſtating the order the moſt natural conſtruction of the word is, that *both* parties were heard, yet we can't intend it. 'Tis held that in convictions, a ſummons is neceſſary to be ſet out, but not in orders; but I think it ought to be ſet out in both caſes.

Lee juſtice: The act does not oblige the ſeſſions to ſet forth their power, and the natural conſtruction of the act is, that there ſhould be a prior application to the juſtices; but it is now ſettled that there is no occaſion for it, for the act is taken to be *directory*, and not *compulſory*. Summons and notice are of the eſſence of juſtice, and the ſeſſions are ſuppoſed to have done it; and therefore I do not think, the ſeſſions has occaſion to ſet it out; for it is to be preſumed, unleſs the contrary appears. *Cur. adviſare vult.*

Money ordered to be refunded by the court of Chancery. 1 Atkyns's Rep. 149. In Chan. Jan. 22d, 1745.

The petitioner, on the 10th of *January* 1744, was put apprentice to *Ward*, a bookſeller at *York*, and the ſum of 80*l.* was given with him as an apprentice for ſeven years. In *July* following a commiſſion of bankruptcy was taken out againſt *Ward*; and being declared a bankrupt, aſſignees were choſen, who ſell off the bankrupt's effects, and he is now the ſuperviſor of the preſs to the purchaſer, and become incapable of performing his part of the contract, nor is the petitioner able to raiſe any money to put him out apprentice to another maſter; and the commiſſion being a recent one, probably no dividend may be made in a year, or a year and half; ſo that all this time will be loſt to the petitioner. Upon theſe circumſtances, the petitioner prayed, that on deducting 10*l.* out of the 80*l.* for his board with the bankrupt during the ſix months he lived with him, the aſſignees might be ordered to pay him 70*l.* out of the

effects of the bankrupt already come to their hands, and not oblige him to prove it as a debt under the commiſſion. The lord chancellor *Hardwicke* was at firſt doubtful, and ſeemed inclined to grant the petition, but on ordering ſearch to be made for precedents, and ſeveral being produced wherein it was directed that apprentices ſhould come in as creditors only; after deducting for the time they lived with the bankrupt, upon the remaining ſum; it was ordered accordingly in this caſe, and that the petitioner ſhould be admitted a creditor for 70 *l.* only. *Tracy Atkins. Ex parte Sandby. See further, where a court of equity will oblige a maſter to refund*, 1 Vern. 460. 2 Vern. 64, 492.

Debt lies at Weſtminſter on a penal ſtatute, but an indictment or information in the proper county only. 1 Lev. 249. Mich. 20 Car. 2. Barrs againſt Hughes.

In any of the Queen's majeſty's courts of record—by action of debt] See *page* 62. *ſect.* 39. Debt on the ſtatute of 5 *Eliz.* brought in the *King's Bench*, for uſing the trade of a grocer at *Saliſbury*, and ſent and tried by *Niſi prius* at *Saliſbury:* and after verdict for the plaintiff on *nil debet*, 'twas moved in arreſt of judgment, That the action did not lie in this court, but ought to have been brought and tried wholly in the proper county, by the ſtatute 23 *Car.* 1. And for this were cited *Hillary* 23 *Car.* 1. *B. R. Rot.* 611. *Mich.* 13 *Car.* 1. *B. R. Bretburgie* againſt *Haſcall*, and *Mich.* 1654. *Child* againſt *Bull*, and *Trin.* 1652. *Rot.* 1377. *Bunton* againſt *Shalate.* But on the other ſide, 'twas ſaid, That the action of debt did not lie at the ſeſſions or aſſizes in the country; and the ſtat. 5 *Eliz.* gives the recovery by action of debt as well as by indictment or information; and the ſtatute 21 *Jac.* 1. does not concern the ſtatute of 5 *Eliz.* in any part; and therefore the ſtatute of 21 *Jac.* 1. is to be taken by referring particulars to particulars, *viz. by indictment* or *information* (which will lie there) *in the proper county*, *but for action of debt* (which will not lie in the proper county) *in the ſuperior courts*, where it will lie; and for this were cited 1 *Cro. Farrington* againſt *Keymer*, and *ibid. Green* againſt *Gray. Latch* 192. 1 *Roll. Abr.* 537. *Trin.* 1653. *B. R. Hodges*'s caſe. And if it ſhould not be ſo, there might be a failer of juſtice; as if the party offends againſt the ſtatute in one county, and goes and lives in another county, and the information or indictment is laid in the proper county, for there the party cannot be brought in to plead: but for debt in the ſuperior court he may be brought in hither out of any county, and the iſſue is to be tried by *Niſi prius* in the proper county. And of that opinion were all the judges, *viz. Kelynge*, *Twyſden*, and *Moreton*, *Wyndham* being dead; and after the caſe had been twice argued at the bar, they gave judgment for the plaintiff in *Hillary* term next following; and they ſaid, That the ſtatute of 21 *Jac.* 1. was not made to ouſt actions of debt on penal ſtatutes, but to give ſuch remedies for them in the proper county as may be had there: but afterwards in *Mich.* 29 *Car.* 2. the contrary opinion was held in the *King's Bench*, between *Clappe* and *Edgecombe*; [which is reported in 2 *Lev.* 204. in manner following.]

Debt upon ſtat. 5 Eliz. ought to be laid in the

Debt was brought in *B. R.* upon ſtat. 5 *Eliz.* for uſing a trade in *Devonſhire*, which was ſent by *Niſi prius* and tried in *Devonſhire*, for the plaintiff; and now it was moved in arreſt of judgment, that the action ſhould have

have been brought as well as tried in *Devonſhire*. To which it was anſwered, that in *Hughes* and *Barnes*'s caſe it was reſolved, that debt lay in this court; but it was replied, that after that caſe, it was adjudged in the caſe of *Nicholls* and *Cochinell*, in the time of *Hale* Ch. J. that the action ought to be brought in the proper county; upon which the court ordered the caſe to be put in the paper. proper county. 2 Lev. 204. Mich. 29 Car. 2. Clappe againſt Edgecombe.

Holt Ch. J. reported the opinion of all the judges in this caſe. An action of debt was brought in the *King's Bench* on 5 *Eliz. c.* 4. by a common informer, for exerciſing a trade, not having ſerved as an apprentice; and the queſtion was, If the juriſdiction of the *King's Bench* was taken away by 21 *Jac.* 1. for it was thought fit to ſettle it, becauſe of the caſe of *Barnes* and *Hughes*, 1 *Vent.* 8. 1 *Lev.* 249. And it was reſolved by the opinion of eleven of the judges, 1ſt, That 21 *Jac.* 1. reſtrains the juriſdiction of the *King's Bench*, in actions of debt by common informers, and that they cannot bring debt upon the ſtatute in the *King's Bench*, unleſs the cauſe of action ariſe in the county where the *King's Bench* ſits, but muſt in other caſes proſecute by information, *&c.* before juſtices of aſſize, *&c.* as the ſtatute directs. 2dly, It was reſolved, that where a remedy is given by action of debt, *&c.* in any court of record, *&c.* by any later ſtatute, ſubſequent to 21 *Jac.* 1. ſuch action is not reſtrained; for the ſaid ſtatute of 21 *Jac.* 1. does not extend to ſuch actions, but ſtands repealed as to them. But the chief juſtice declared, that his own private opinion was, That where any ſubſequent act gives any popular action, it muſt be laid in the proper county within the equity of 21 *Jac.* 1. *Hale* Ch. J. was always againſt the opinion of *Barns* and *Hughes*; and the principal objection in that caſe was, that the party offending might get out of the county, and ſo eſcape the puniſhment of the law, as being out of their juriſdiction: But by *Holt* Ch. J. this objection does not hold, for there may be proceſs of outlawry ſued out againſt him: the ſtatute of 21 *Jac.* 1. giving the ſame proceſs that lay in actions of treſpaſs *vi & armis* at common law; and therefore neither debt nor information, tho' exhibited by the attorney general, lieth here, but in *Yorkſhire*, which is the proper county in this caſe. Debt lies not on any penal ſtatute made *before* 21 Jac. 1. in B. R. 1 Salk. 373. Hil. 10 Wil. 3.

And that the ſaid juſtices] See *page* 62. *ſect.* 39. —— By ſtat. 31 *Eliz. c.* 5. *ſect.* 7. it is enacted, "That all ſuits for uſing any art or myſtery in the which the party hath not been brought up according to the ſtatute in that behalf made, (5 *Eliz. c.* 4.) ſhall be ſued and proſecuted in the general quarter-ſeſſions of the peace, or aſſiſes of the ſame county where the offence ſhall be committed, or otherwiſe enquired of, heard and determined in the aſſiſes or general quarter-ſeſſions of the peace of the ſame county where ſuch offence ſhall be committed, or in the leet within which it ſhall happen, and not in any wiſe out of the ſame county where ſuch offence ſhall happen or be committed."

Mr. *Eyre* moved to quaſh an indictment for exerciſing the trade of a goldſmith not having ſerved ſeven years apprenticeſhip, for this exception, *viz.* That it was found at a quarter-ſeſſions for a borough, whereas by ſeſſions. Indictment upon 5 Eliz. may be found at a borough

1 Salk. 370. Mich. 3 W. & M. Rex & Regina v. Franklin.

by the ſtatute 31 *Eliz. c.* 5. it ought to be at the quarter-ſeſſions of the county. But the court held, the indictment might be at the ſeſſions of a borough, tho' it had been otherwiſe ruled heretofore in ſeveral other caſes.

Indictment upon 5 Eliz. c. 4. taken at the ſeſſions in a corporation, quaſhed.

An indictment was found at the ſeſſions of the peace of the corporation of *Wells* in *Somerſetſhire* againſt the defendant for having uſed a trade, not having ſerved as an apprentice for ſeven years. And being moved into the *King's Bench* by *certiorari*, it was quaſhed becauſe the juſtices at ſuch ſeſſions have not juriſdiction to take ſuch indictments.

2 Ld. Raym. 767. Eaſt. 1 Ann. Regina v. Taylor.

Indictment on 5 Eliz. c. 4. found at the ſeſſions for the city of Carliſle, held good. 1 Bur. Rep. 251. Hil. 30 Geo. 2. Rex v. Strong.

Mr. ſerjeant *Poole* ſhewed cauſe againſt quaſhing an indictment on 5 *Eliz. c.* 4. *ſect.* 31. (for exerciſing a trade, not having ſerved an apprenticeſhip therein) found at the ſeſſions for the city of *Carliſle*. Mr. *Norton* had on 27th *November* 1756 moved to quaſh it, upon an objection that the *city* ſeſſions had no *juriſdiction*. And he had cited, in the proof of it, the caſe of *Regina* v. *Taylor*, 2 *Ld. Raym.* 767. where ſuch an indictment was quaſhed, "becauſe the borough ſeſſions had *no juriſdiction* to take ſuch indictments." He inſiſted that only the *quarter*-ſeſſions of the county have juriſdiction. The indictment in that caſe of *Taylor*, was found at the ſeſſions for the *corporation* of *Wells*; and moved hither by *certiorari*. Lord *Mansfield*, at the time of the original motion, looked into the act of 5 *Eliz. c.* 4. and ſaid that this act [*ſect.* 39.] expreſly gives the power to mayors or other head-officers of *cities* or *towns corporate*, at their ſeſſions. And now, upon ſhewing cauſe, the court was unanimouſly of that opinion. The caſe of the *Queen* againſt *Taylor* was in *Eaſter* term 1702: and is contradicted by that of *Regina* v. *Franklyn* in 2 Ld. *Raym.* 1038. which was determined in *Mich.* 3 *Ann.* 1704. though it is in 1 *Salk.* 370, by miſtake, put under *Michaelmas*. 3 *Will. & Mar. Per Cur.* Rule diſcharged.

Information, *qui tam*, for exerciſing a trade, contrary to 5 Eliz. c. 4. not having ſerved an apprenticeſhip, may be laid at a pariſh. 1 Bur. Rep. 366. Trin. 30 & 31 Geo 2. Ball, *qui tam* v. Cobus.

Mr. *Whitaker* ſhewed cauſe againſt quaſhing an information *qui tam*, for exerciſing the trade of a baker at *the pariſh* of *Speldhurſt* in *Kent*, not having ſerved an apprenticeſhip; contrary to 5 *Eliz. c.* 4. The 1ſt objection taken to this information by Mr. *Clayton* on the original motion was, "That *Speldhurſt* does not appear to be a city, market-town or corporation: it may be a village." For ſupporting which, he had cited 2 *Keble* 583. *Rex* v. *French*; (1ſt exception.) which caſe is alſo reported in 8 *Mod.* 26. *S. C. Rex* v. *Turnith*; and 1 *Vent.* 51. *S. C.* But though theſe are all reports of the ſame caſe (which was cited by Mr. *Clayton*, only out of *Keble*,) yet Mr. *Whitaker* alledged that they are inconſiſtent with each other. Mr. *Clayton*, *contra* ——The act was intended *merely* for the benefit of *corporations:* and it has always been taken, that it does *not* extend to any *village*, or any place leſs than a city, market-town, or corporation, (*Barnesford* thought otherwiſe, in 1 *Mod.*) and it would be extremely *inconvenient* to the inhabitants of all diſtant retired villages, if it did. Lord *Mansfield* ——The queſtion is not *now* upon the *evidence*; but upon the laying the offence. Have you any authority that it may not

be *laid* at a *pariſh?* Mr. *Clayton*——None but that in *Keble*; (*viz.* 2 *Keble* 583.) Lord *Mansfield*—— There is nothing in the act that reſtrains it to be laid in a city, market-town, or corporation: and this *laying* it in a *pariſh* will *not affect the* evidence. Mr. juſt. *Deniſon* expreſſed himſelf in terms exactly to the ſame effect. Mr. juſt. *Foſter*——*Many* trades are carried on in *villages:* Moſt of the *cloth*-trade in *Yorkſhire*, is carried on in the *villages*. Mr. *Clayton* offered another objection, *viz.* That it was not averred that he did not *then* exerciſe the trade, (namely, at the time of making the act.) But the court (without any heſitation) over-ruled this objection. So that, (both objections being over-ruled,) the rule to ſhew cauſe why the information ſhould not be quaſhed, was diſcharged.

Shall be within the age of one and twenty years] See *page* 63. *ſect.* 43. It ſeems clearly agreed, that by the common law infants, or perſons under the age of twenty-one years, cannot bind themſelves apprentices, in ſuch manner as to intitle their maſters to an action of covenant, or other action, for departing their ſervice, or other breaches of their indentures; which makes it neceſſary, according to the uſual practice, to get ſome of their friends to be bound for the faithful diſcharge of their offices, according to the terms agreed on. [And therefore it became neceſſary to make the proviſion in *ſect.* 42. of the act 5 *Eliz. viz.* that infants ſhall be bound by their own covenants. But this ſeems to be underſtood only where they are *compelled* to be bound by the means preſcribed by this ſtatute; as appears by the following caſe.]

By the common law, perſons under 21 cannot bind themſelves apprentices. 11 Co 89. b. 2 Inſt. 379, 380. 3 Leon. 63. Fareſl. 15.

Covenant againſt an apprentice for departing from his ſervice without licence, within the time of his apprenticeſhip. The defendant pleaded, That at the time of the making the indenture, he was within age: and thereupon it was demurred: and it was argued at the bar, that this indenture ſhould bind the infant, becauſe it was for his advantage to be bound apprentice, to be inſtructed in a trade; he is alſo compellable by the ſtatute of *quinto Elizabethæ Reginæ*, to be bound out an apprentice: but all the court reſolved, That although an infant may *voluntarily* bind himſelf apprentice; and if he continue apprentice for ſeven years, he may have the benefit to uſe his trade: yet neither at the common law, nor by any words of the ſtatute of *quinto Elizabethæ*, a covenant or obligation of an infant for his apprenticeſhip ſhall bind him. But if he miſbehave himſelf, the maſter may correct him in his ſervice, or complain to a juſtice of peace, to have him puniſhed, according to the ſtatute: but no remedy lieth againſt an infant upon ſuch covenant; and therefore it was adjudged for the defendant.

A covenant or obligation of an infant for his apprenticeſhip ſhall not bind him. Cro. Car. 179. Hil. 5 Car. 1. Gilbert v. Fletcher.

Covenant on an indenture of apprenticeſhip, wherein the plaintiff covenanted with the father and ſon (the apprentice), and they on the other ſide covenanted with him (the plaintiff), and this action was brought jointly againſt the father and the ſon; for that the ſon had covenanted faithfully to account at his maſter's (the plaintiff's) requeſt, for all ſuch of his maſter's (the plaintiff's) goods as ſhould come into his hands; and the breach aſſigned was, that the defendant (the ſon) hath not accounted,

If his father or other perſon doth covenant for an apprentice, ſuch covenant ſhall bind the father or ſuch other perſon, if the appren-

tice be likewiſe bound. 8 Mod. 190. Mich. 10 Geo. 1. Whitley v. Loftus.

accounted, &c. Upon *non infregerunt conventionem* pleaded, the plaintiff had a verdict; and now it was moved in arreſt of judgment. (1.) That the declaration was ill, becauſe the plaintiff did not ſet forth any *requeſt* made to the ſon to account, which he ought to have done, that the defendant might have an opportunity to traverſe it. Beſides, this being a joint action againſt the father and the ſon, and the breach aſſigned only againſt the ſon, cannot maintain this judgment. Neither ought the action to be brought againſt the father; for he did not covenant, that his ſon ſhould truly *account*, &c. he only covenanted for himſelf ſeparately, to pay the money which he was to give to the plaintiff for taking the ſon apprentice; and the clauſe in the latter end of theſe articles is in the ſingular number, (*viz.*) That each of them (the father and ſon) binds himſelf for the true performance thereof; ſo that the father cannot properly be ſaid to be bound for his ſon, but only for himſelf.

It was argued on the other ſide, that this was a *covenant* entered into by the maſter (the plaintiff) on one part, and by the ſon with the conſent of his father on the binding part, but by both father and ſon as to all other purpoſes; for tho' the ſon is only bound apprentice, yet they both covenant for the true performance of all covenants, &c. the words in the cloſe of the articles being, (*viz.*) That each of them binds himſelf, &c. for the true performance of all the covenants and agreements therein mentioned. And even from the nature of theſe covenants, the father is always bound for the ſon; for otherwiſe maſters could not rely on the covenants of their ſons, who are commonly under age, and ſo by law not capable to conſider what covenants to make; and conſequently in this caſe the father ſhall be taken to covenant for the performance of his ſon's part as well as his own. The court was of opinion, that the very end of binding the father was to anſwer the wrong which might be done by the ſon to his maſter, therefore he (the father) muſt be obliged for his ſon's true performance of the articles; 'tis true, at the end of the articles the covenant is in the ſingular number, (*viz.*) That each of them did bind himſelf; and it muſt be ſo where the ſon is bound to perform the thing for which the covenant was made; and this clauſe is uſually inſerted, that the covenants may be taken diſtributively, (*viz.*) That each of the covenanters ſhould perform his part; and this makes the covenant of the ſon bind the father, who covenanted for him as well as for himſelf. So the plaintiff had his judgment.

Covenant between the maſter and a third perſon, the ſervant not being party, makes no apprenticeſhip. 2 Salk. 478. Trin. 9 Will. 3. The caſe of Cheſterfield.

Jerriſon was a ſervant to Sir *Paul Jenkinſon* in *Waltham*; afterwards he left his ſervice, and was put out by his maſter Sir *Paul Jenkinſon*, to a barber in *Cheſterfield*, who was to teach him to ſhave and make periwigs, for which he was to have 5*l.* from Sir *Paul*: *Jerriſon* continued a year in this employment, according to covenants between Sir *Paul* and the barber, to which *Jerriſon* was no party; and the court adjudged that this did not make a ſettlement at *Cheſterfield*, becauſe it was no ſervice; and that the ſaid *Jerriſon* was thereby no more than a boarder there for his education, which is no ſervice to make a ſettlement.

Stat.

Stat. 5 *Eliz. c.* 5. [*A. D.* 1562. *intituled,*] "An act touching politick conſtitutions for the maintenance of the navy." Stat. 5 Eliz. c. 5.

Sect. 12. "Be it alſo enacted by the authority aforeſaid, that from henceforth it ſhall be lawful to all and every owner and owners of ſhips or veſſels; and to every houſholder, uſing and exerciſing the trade of the ſeas by fiſhing, or otherwiſe, and to every gunner or gunners, commonly called cannoneers, and to every ſhipwright, to take and keep one or more apprentice or apprentices to be brought up in the ſaid trade or trades, every of the ſame apprentice or apprentices to be to them bound for ten years or under: (2) And every apprentice ſo taken, being above ſeven years of age, ſhall be by the ſame covenants bound, ordered, and uſed to all intents, according to the cuſtom of the city of *London*; ſo that the ſame covenant or bond of apprenticeſhip be made by writing indented, and inrolled in the town where the ſame apprentice ſhall be then inhabiting, if it be a town corporate; and if the town be not incorporate, then to be inrolled in the next town incorporate to the habitation of every ſuch apprentice: (3) And that the officers of every ſuch town corporate, ſhall take for every ſuch inrolment not above twelve pence; any law, ſtatute, or other matter whatſoever to the contrary notwithſtanding." Owners of ſhips, fiſhers on the ſea, gunners and ſhipwrights, may take apprentices.

Stat. 43 *Eliz. cap.* 2. [*A. D.* 1601.] *ſect.* 5. "And be it further enacted, that it ſhall be lawful for the ſaid churchwardens and overſeers, or the greater part of them, by the aſſent of any two juſtices of the peace aforeſaid, to bind any ſuch children, (whoſe parents ſhall not be thought able to keep and maintain them,) to be apprentices, where they ſhall ſee convenient, till ſuch man-child ſhall come to the age of four and twenty years, and ſuch woman-child to the age of one and twenty years, or the time of her marriage; the ſame to be as effectual to all purpoſes, as if ſuch child were of full age, and by indenture of covenant bound him or herſelf." 43 Eliz. c. 2. Binding of poor children apprentices.

Stat. 1 *Jac.* 1. *cap.* 17. [*A. D.* 1604.] *ſect.* 3. "No perſon or perſons ſhall make, or cauſe to be made any felt or hat, of or with any wool or other ſtuff whatſoever, unleſs he or they ſhall have firſt ſerved as apprentices in the foreſaid trade or art of felt-making, during the ſpace of ſeven years at the leaſt; neither ſhall they retain or ſet to work in the ſaid art any other perſon and perſons than journeymen, that have already ſerved in that art, and apprentices lawfully bound in the ſaid trade or art, nor above the number of two apprentices at one time, nor thoſe for any leſs term than ſeven years; upon pain to forfeit five pound for every month that he ſhall continue offending contrary to the true meaning of this act, and to be recovered to the uſes and in manner aforeſaid. 1 Jac. 1. c. 17. Felt makers to have no more than two apprentices.

Sect. 5. "Provided always, that nothing in this act, or in the ſaid former act contained, ſhall extend to charge any perſon or perſons lawfully exerciſing the ſaid art, with any pain or forfeiture, for ſetting or uſing his or their own natural ſon or ſons to the making or working of

hats or felts in his or their own houſe or houſes, ſo as every ſuch ſon or ſons be bound by indenture of apprenticehood for the term of ſeven years at the leaſt, which term ſhall not be to expire before he ſhall be of the full age of two and twenty years; any thing aforeſaid to the contrary notwithſtanding.

7 Jac. 1. c. 3. **Stat. 7 *Jac.* 1. *c.* 3.** [*A. D.* 1609. *intituled*,] "An act for the continuing and better maintenance of huſbandry and other manual occupations, by the true imployment of monies given and to be given for the binding out of apprentices."

How money given for the binding of poor children to occupations, ſhall be beſtowed.

"Foraſmuch as the true labour and exerciſe of huſbandry, and the bringing up of apprentices of both ſexes in trades and manual occupations, are things very profitable in the commonwealth, and acceptable and pleaſing unto Almighty God, there being already great ſums of money freely given, and more in time to come like to be given by divers well-diſpoſed perſons, unto the corporations of divers cities, boroughs, towns corporate, and unto divers perſons in ſundry towns not corporate, and pariſhes within this realm of *England*, to be continually imployed in the binding out as apprentices, of a great number of the pooreſt ſort of children unto needful trades and occupations; the experience whereof hath brought forth very great profit and commodity unto thoſe cities, towns and pariſhes where any parts of the ſaid monies have been ſo given and imployed, and ſo no doubt there will conſtantly enſue thereof the exceeding good of the commonwealth in general: (2) And for that the moſt part of the poorer ſort of children, would (as heretofore) without ſuch good care and aſſiſtance be brought up in idleneſs, and diſordered kinds of life, to their utter overthrow, and to the great prejudice of the whole commonwealth: (3) And for that it is very likely that many other well-diſpoſed people will be the better encouraged, willingly to follow the like good example in beſtowing of good ſums of monies to the ſame good and godly purpoſes, if it might be ſo provided, that ſuch monies as have been already ſo freely given, or as hereafter ſhall be given for the binding out of ſuch poor children apprentices, may continually hereafter remain, and be wholly imployed accordingly.

How money given for the binding out of apprentices of poor children ſhall be employed, and by whom.

Sect. 2. "Be it therefore enacted by the king's moſt excellent majeſty, the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, that all ſums of money ſo freely given at any time within three years laſt paſt, or hereafter to be given by any perſon or perſons, to be continually imployed for the binding out of apprentices, as aforeſaid, ſhall for ever from henceforth continue, and be from time to time uſed and employed to ſuch uſes, intents and purpoſes only, and by ſuch perſons, and in ſuch manner and form as ſhall be hereafter by this preſent act ſpecified and declared, except the ſame have been, or ſhall be otherwiſe ordered or diſpoſed by the givers thereof; that is to ſay, (2) That all corporations of all cities, boroughs and towns corporate, by what name or names ſoever they ſhall be known

known or incorporated, and in towns and parishes not incorporate, the parson or vicar of every such town or parish, together with the constable or constables, the churchwarden or churchwardens, collectors, and the overseers for the poor of the time being, or the most part of them, where any such sum or sums of money are already given, or shall be hereafter given to be so imployed, shall from time to time within the said several cities, boroughs, towns and parishes respectively, have the nomination and placing of such apprentices, and the guiding and imployment of all such monies as have been heretofore so given, or which hereafter shall be given, to and for the continual binding forth of such and so many apprentices, and in such sort as is already, or shall hereafter be so given and appointed, either by the last will and testament, or by any writing or writings under the hands and seals of any person or persons which hath already, or hereafter shall so give any sum or sums of monies unto the good and godly purposes and intents aforesaid: (3) and if the corporation of any such cities, boroughs or towns corporate, by what name or names soever they shall be called or incorporated, or any the person or persons in the other towns and parishes above-mentioned, appointed by this act to have continually the guiding and imployment of such sums of monies so already given, or hereafter to be given to the intents and purposes aforesaid, shall at any time hereafter wilfully forbear or refuse, according to their duties in this behalf, to imploy such sums of money so given, or to be given, as aforesaid, for the binding out of such apprentices, by means of which wilful forbearance or refusing, the said money shall not be imployed accordingly; that *then* they and every of them, so offending contrary to this act, shall forfeit for every such offence, the sum of three pounds six shillings and eight pence lawful *English* money; the one half whereof to be given to the poor of the town or parish where such fault or offence shall be done or committed; the other moiety to the party that shall sue for the same; (4) and that every man that will, may and shall be admitted to sue for the same moiety; for the use and benefit of the said poor, and shall be also admitted to sue for the forfeiture of the other moiety in any of the king's majesty's courts of record, to his own benefit and behoof, by action of debt, bill, plaint or information, wherein no protection, wager of law or essoin shall he admitted or allowed.

The forfeiture of those, who of duty ought, and yet refuse to employ the money.

Sect. 3. And for that all monies so given may the better continue to and for the purposes aforesaid, Be it enacted by the authority aforesaid, that the master, mistress or dame of every such apprentice or apprentices that shall receive any such sum or sums of money, as aforesaid, shall become bound with one or two sufficient sureties, by bond or obligation in double the sum which they and every of them shall so receive with such apprentice or apprentices, as aforesaid, unto the corporation of any such city or town corporate, by what name or names soever they shall be called or incorporated, or to such person or persons in the other towns and parishes not incorporated, appointed by this act to have continually the guiding and imployment of all such sums of money so already given, or hereafter to be given to the intents and purposes aforesaid, respectively; upon condition

The party which receiveth the money, shall be bound with sureties to repay it.

to repay ſuch ſum or ſums of money, as he or ſhe ſhall receive with ſuch apprentice or apprentices, at the end of ſeven years next enſuing the date of the ſaid obligation, or within three months next after the end of the ſaid ſeven years: (2) and if ſuch apprentice ſhall happen to die within the ſaid ſpace of ſeven years, then within one year after his or her ſaid death; (3) and if the maſter, miſtreſs, or dame to whom any ſuch apprentice or apprentices ſhall be bound, ſhall happen to die within the ſaid ſpace of ſeven years, then within one year next after his or her death; (4) ſo as the ſaid monies may be again imployed for placing ſuch apprentice with ſome other perſon of the ſame trade, to ſerve out the reſidue of the years of his or her former apprenticeſhip, by the diſcretion of the ſaid perſons truſted, as aforeſaid.

Within what time the money ſhall be put forth.

Sect. 4. "And be it farther enacted by the authority aforeſaid, that every ſuch ſum or ſums of money ſo given, or to be given in manner and form, and to and for the good uſes and intents aforeſaid, ſhall always be put forth and imployed by the parties aforeſaid, that by this act ſhall have the diſpoſing and employment thereof, within three months at the furtheſt, after ſuch money ſhall come to the hands of the ſaid parties, that by the intent and true meaning of this act ought to diſpoſe and employ the ſame; (2) and if at ſuch times there ſhall not be found fit and apt perſons to be bound out apprentices, as aforeſaid, within the ſaid cities, towns and pariſhes where ſuch ſums of money are or hereafter ſhall be given to be imployed, as afore is declared; then ſuch of the pooreſt children of any of the pariſhes next adjoining, ſhall be bound apprentices in manner, as aforeſaid, as by the care and good diſcretions of the parties, which by this act have the diſpoſing and imployment of the ſaid ſums of money in the cities, towns and pariſhes where it was firſt given to be imployed, ſhall be thought fit and convenient, taking ſuch bonds and obligations of the perſons that ſhall receive the ſaid ſums of money ſo put forth, and with ſuch ſureties, and upon ſuch conditions, as is above-mentioned and declared.

A proviſion if there be not fit perſons in that pariſh to be apprentices.

What ſort of perſons ſhall be apprentices.

Sect. 5. "Provided always, and be it enacted by the authority aforeſaid, that choice from time to time be made of the pooreſt ſorts of children of every ſuch city, town and pariſh where ſuch monies ſhall be ſo given, and whoſe parents are leaſt able to relieve them: (2) and that no ſuch apprentice ſhall be above the age of fifteen years when he or ſhe ſhall be ſo firſt bound out an apprentice."

Account ſhall be made of the money imployed.

Sect. 6. "And for the better execution of this act, be it further enacted by the authority aforeſaid, that all and every perſon and perſons appointed by this act, to have the imploying and diſpoſing of any ſum or ſums of money ſo given or to be given, as aforeſaid, within any town or pariſh not corporate, ſhall after the end of this preſent ſeſſion of parliament, once every year in the *Eaſter*-week, or within one month next after *Eaſter*-day, make a true and perfect account before four, three, or two juſtices of the peace dwelling in or next to every the ſaid towns or pariſhes, of all ſuch ſum and ſums of money as they or any of them have imployed in binding of apprentices, by virtue of this act, and of all bonds and obligations taken for the payment thereof;

thereof; and alſo of all ſuch ſums of money as then ſhall happen to be remaining in their hands not imployed: (2) and alſo ſhall at the making and yielding up of the ſaid account, or within ten days then next following, yield and deliver up unto ſuch as ſhall happen next to ſucceed them, or then to be in the ſaid rooms and places, all ſuch obligations and bonds as by them or any of them have been before that time taken to the uſes aforeſaid; as alſo all ſums of money remaining in their or any of their hands, to be employed, as aforeſaid, and not employed at the time of the yielding up of the ſaid account."

Sect. 7. "And further be it enacted by the authority aforeſaid, that if any of the parties appointed and truſted by this act to have the diſpoſing and employment of any of the ſaid ſums of money ſo given or to be given, as aforeſaid, ſhall in any point or degree break the truſt and confidence in them in this behalf repoſed, or ſhall commit any other miſdemeanor or offence in miſimploying of the ſaid ſums of money, or any part thereof, or in doing any other act or acts contrary to their duties, and the true intent and meaning of this act, for which there is not by this act any penalty given or appointed, then it ſhall and may be lawful for any perſon or perſons whatſoever, in the behalf of the poor of ſuch city, borough or pariſh, to exhibit his petition to the lord chancellor, or lord keeper of the great ſeal of *England*, for the time being, touching the ſame: which lord chancellor, or lord keeper of the great ſeal of *England*, for the time being, ſhall thereupon have full power and authority to award a commiſſion out of the high court of Chancery, under the great ſeal of *England*, to ſuch and ſo many perſons as his lordſhip ſhall think meet, to enquire hear and determine the ſaid offences, and every of them: (2) and if the ſaid commiſſioners, or the moſt part of them ſhall find, that any ſum or ſums of money ſo given or to be given, are loſt, impaired, waſted or diminiſhed, then they or the moſt part of them ſhall likewiſe have power, by virtue of this act and of their ſaid commiſſion, to rate, raiſe and collect the ſaid ſum of money ſo loſt, impaired, waſted or diminiſhed, upon ſuch perſon or perſons in places not incorporate, as by this act are appointed to have the guiding and ordering of the ſaid monies, if they or any of them have failed in their ſaid duties in that behalf, or otherwiſe upon the able inhabitants of ſuch city, town or pariſh where the ſame ſhall ſo happen, as in the diſcretion of the ſaid commiſſioners, or the greateſt part of them ſhall be thought fitteſt, and to return the ſaid commiſſion, and the manner of the execution thereof, into the ſaid high court of Chancery within three months next after the execution thereof: (3) and if any perſon or perſons ſhall find himſelf grieved by any thing done by the ſaid commiſſioners, then upon complaint *thereof* made in the high court of chancery, the ſaid lord chancellor or lord keeper for the time being, ſhall have full power and authority to order and decree the ſame, as to his lordſhip ſhall be thought moſt fit to ſtand with equity and good conſcience.

A remedy where any party truſted ſhall break the truſt, or commit any offence.

A remedy for any party grieved by the commiſſioners.

Stat. 21 *Jac.* 1. c. 28. [*A. D.* 1623.] "And be it enacted, that all perſons to whom the overſeers of the poor ſhall, according to 43 *Eliz.* bind

21 Jac. 1. c. 28.

any children apprentices, may take and receive, and keep them as apprentices; any former ſtatute to the contrary notwithſtanding."

3 Car. 1. c. 4. **Stat.** 3 *Car.* 1. *c.* 4. [*A. D.* 1627.] "And be it enacted, that all perſons, to whom the overſeers of the poor ſhall, according to 43 *Eliz.* bind any children apprentices, may take and receive, and keep them as apprentices; and alſo that the churchwardens and overſeers of the poor, mentioned in the ſaid act made in the ſaid 43d year, may, by and with the conſent of two or more juſtices of the peace, whereof one to be of the *quorum*, within their reſpective limits, wherein ſhall be more juſtices than one; and where no more ſhall be than one, with the aſſent of that one juſtice of the peace, ſet up, uſe and occupy any trade, myſtery, or occupation, only for the ſetting on work, and better relief of the poor of the pariſh, town or place of, or within which they ſhall be churchwardens or overſeers of the poor; any former ſtatute to the contrary notwithſtanding."

8 & 9 Wil. 3. c. 30. **Stat.** 8 & 9 *Will.* 3. *c.* 30. [*A. D.* 1697. *intituled*,] "An act for ſupplying ſome defects in the laws, for the relief of the poor of this kingdom."

43 Eliz. c. 2. *Sect.* 5. "And whereas by an act made in the three and fortieth year of the reign of queen *Elizabeth*, intituled, *An act for the relief of the poor*, it is amongſt other things enacted, that it ſhall be lawful for the churchwardens and overſeers of the poor of any pariſh, or the greater part of them, by the aſſent of two juſtices of the peace, whereof one to be of the *quorum*, to bind poor children apprentices, where they ſhall ſee convenient; but there being doubts whether the perſons to whom ſuch children are to be bound, are compellable to receive ſuch children as apprentices, that law hath failed of its due execution: Be it therefore enacted and declared by the authority aforeſaid, that where any poor children ſhall be appointed to be bound apprentices, purſuant to the ſaid act, the perſon or perſons, to whom they are ſo appointed to be bound, ſhall receive and provide for them, according to the indenture ſigned and confirmed by the two juſtices of the peace, and alſo execute the other parts of the ſaid indentures; and if he or ſhe ſhall refuſe ſo to do, oath being thereof made by one of the churchwardens, or overſeers of the poor, before any two of the juſtices of peace for that county, liberty, or riding, he or ſhe ſhall for every ſuch offence forfeit the ſum of ten pounds, to be levied by diſtreſs and ſale of the goods of any ſuch offender, by warrant under the hands and ſeals of the ſaid juſtices, the ſame to be applied to the uſe of the poor of that pariſh or place where ſuch offence was committed; ſaving always to the perſon, to whom any poor child ſhall be appointed to be bound an apprentice, as aforeſaid, if he or ſhe ſhall think themſelves aggrieved thereby, his or her appeal to the next general or quarter ſeſſions of the peace for that county or riding, whoſe order therein ſhall be final, and conclude all parties."

Poor children bound apprentices purſuant to the act 43 Eliz. c. 2. thoſe to whom they are bound, to provide for them according to the indenture ſigned by the juſtices, &c.

Penalty on offender.

Perſons to whom poor children are bound, being aggrieved, may appeal to the juſtices.

Minchamp being a *merchant* at *Mile-end*, two juſtices bound a poor girl apprentice to him; he appealed to the ſeſſions, and the order was diſcharged; becauſe they thought it unfit to compel a *merchant* to take an apprentice; and now this court on conſideration of the matter, confirmed the order of ſeſſions; becauſe the late act having made perſons *compellable* to take apprentices, and given an appeal to the ſeſſions, it was in the diſcretion of the juſtices at ſeſſions to determine, whether it was or was not fitting to put an apprentice upon any one; and therefore the court would not diſturb what the ſeſſions had done, but confirmed the order.

Juſtices at ſeſſions are proper judges, whether fit to oblige a perſon to take an apprentice, or not.
2 Salk. 491. Trin. 13 W. 3. B. R. Minchamp's caſe.

An order was made by juſtices for *Wagſtaff* to take a poor child apprentice, and ſign an indenture, by which, *inter alia*, he covenants to give the child two ſuits of cloaths, *&c.* This caſe is not within the act, becauſe it ſays the children of poor perſons; but this order ſays, it was a poor child, and yet it may have parents able to maintain it. Secondly, the age of the child does not appear. Thirdly, Mr. *Wagſtaff* is ſuch a perſon as the juſtices cannot oblige to take a poor child, for it does not appear that Mr. *Wagſtaff* is a houſekeeper, ſo that it may be he was a lodger, and though the act ſays, as the overſeers ſhould think fit, yet that muſt have a reaſonable conſtruction; the act ſays, they ſhall put them apprentices as they think fit; that does not extend to the terms, but only to what ſort of children, but the terms are left to the law; here is a covenant that he ſhall at the end of the term give him two ſuits of cloaths; they might as well have ordered that he ſhould have given him a hundred pounds. It appears that Mr. *Wagſtaff* is a gentleman, an attorney, 3 *Keb.* 3 *Mod.* 269. At law it is a queſtion upon the ſtatute 43 *Eliz. c.* 2. whether a perſon could be compelled to take an apprentice 'till 8 *Ann. c.* 9. 9 *Ann. c.* 21. but ſtill you cannot compel every perſon, but only ordinary trades, or men of huſbandry. *Chief juſtice:* There is no occaſion to deſcribe the child farther than the act requires; but the providing two ſuits of cloaths has no relation to his being apprentice. Mr. *Forteſcue:* It is proper to have indentures; and this is a covenant very proper, becauſe 8 & 9 *Will. c.* 30. gives a power to the juſtices to appoint what terms they think fit; for the perſon is to receive the child according to ſuch indentures as ſhall be ſigned by the juſtices, ſo that the indenture is to be ſettled by the juſtices. *Chief juſtice:* At that rate the juſtices may make a covenant to give him a houſe, and allow him twenty pounds *per annum*; the indentures are in point of time, and other things properly relating to an apprentice; they may appoint him neceſſaries during his apprenticeſhip. The order quaſhed.

Men of ordinary trades, or of huſbandry, are compellable only to take apprentices.
1 Seſſ. Caſ. 48. Mich. 12 An. The Queen againſt Wagſtaff.

Stat. 2 & 3 *Ann. c.* 6. [*A. D.* 1703. *intituled,*] "An act for the increaſe of ſeamen, and better encouragement of navigation, and ſecurity of the coal trade." 2 & 3 Ann. c. 6.

"Whereas the giving due encouragement to ſuch of the youth of this kingdom, as ſhall voluntarily betake themſelves to the ſea ſervice, and practice of navigation, and obliging others, who, by reaſon of their own or

their parents poverty, are deſtitute of imployment, or any lawful means whereby to maintain themſelves, may greatly tend to the increaſe of able and experienced mariners and ſeamen, for the ſervice of her majeſty's royal navy, and for the carrying on the trade and commerce of this kingdom: Be it therefore enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, that from and after the five and twentieth day of *March* in the year of our Lord one thouſand ſeven hundred and four, it ſhall and may be lawful to and for two or more juſtices of the peace, in their ſeveral and reſpective counties, ridings, or diviſions, as alſo to and for all mayors, aldermen, bailiffs, and other chief officers and magiſtrates of any city, borough, or town corporate, within her majeſty's kingdom of *England*, dominion of *Wales*, and town of *Berwick* upon *Tweed*, and likewiſe to and for the churchwardens and overſeers of the poor (for the time being) of the ſeveral and reſpective pariſhes within the places aforeſaid, by and with the conſent and approbation of ſuch juſtices of the peace, mayors, aldermen, bailiffs, or other the chief officers or magiſtrates aforeſaid, to bind and put out any boy or boys, who is, are, or ſhall be of the age of ten years, or upwards, or who is, are, or ſhall be chargeable, or whoſe parents are or ſhall become chargeable to the reſpective pariſh or pariſhes wherein they inhabit, or who ſhall beg for alms, to be apprentice and apprentices to the ſea ſervice, to any of her majeſty's ſubjects, being maſters or owners of any ſhip or veſſel uſed in ſea ſervice, and belonging to any port or ports within the kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed* aforeſaid, for ſo long time, and until ſuch boys ſhall reſpectively attain or come to the age of one and twenty years; and ſuch binding out any ſuch apprentice ſhall be as effectual in the law, to all intents and purpoſes, as if ſuch boy were of full age, and by indenture had bound himſelf an apprentice: And to the end that the time of the continuance of the ſervice of ſuch apprentice or apprentices may the more plainly and certainly appear, the age of every ſuch boy, ſo to be bound apprentice, ſhall be mentioned and inſerted in his indentures, being taken truly from a copy of the entry in the regiſter book, wherein the time of his being baptized is or ſhall be entred (where the ſame can or may be had) which copy ſhall be given and atteſted by the miniſter, vicar, or curate of ſuch pariſh or pariſhes, wherein ſuch boy's baptiſm ſhall be regiſtred, without fee or reward, and may be writ upon paper or parchment without any ſtamp or mark; and where no ſuch entry of ſuch boy's being baptized can be found, two or more of ſuch juſtices of the peace, and ſuch mayors, aldermen, bailiffs, or other chief officers ſhall, as fully as they can, inform themſelves of ſuch boy's age, and from ſuch information ſhall inſert the ſame in the ſaid indentures; and the age of ſuch boy ſo inſerted and mentioned in the ſaid indentures (in relation to the continuance of his ſervice) ſhall be taken to be his true age, without any further proof.

Pariſh boys may be put out apprentices to the ſea ſervice,

to maſters of ſhips, &c.

Boy's age to be inſerted in his indenture, &c.

Sect.

Sect. 2. " And be it further enacted by the authority aforeſaid, that the churchwardens and overſeers of the poor, for the time being, of the ſeveral and reſpective pariſhes, from whence any ſuch boy ſhall be bound apprentice to the ſaid ſervice, as aforeſaid, ſhall pay down to ſuch maſter, to whom the boy is bound, at the time of his binding, the ſum of fifty ſhillings, to provide neceſſary clothing and bedding for ſea ſervice, for ſuch boy; and the charges by this act appointed ſhall be allowed to the ſaid churchwardens and overſeers on their accounts.

Churchwardens to pay down 50 s. for boy's neceſſary cloathing, &c. and be allowed the ſame in their accounts.

Sect. 5. " And be it further enacted, that the churchwardens and overſeers of the pariſh, out of which any ſuch boy ſhall be bound an apprentice, ſhall ſend the ſaid indentures to the collector of her majeſty's cuſtoms, reſiding at or belonging to any port or ports within this kingdom of *England*, dominion of *Wales*, and town of *Berwick* upon *Tweed*, whereunto ſuch maſters or owners of ſhips or veſſels, to whom ſuch apprentice or apprentices ſhall be bound, do or may belong; who ſhall, in a book or books to be by him kept for that purpoſe, fairly enter, from time to time, all and every indenture and indentures, whereby ſuch apprentice and apprentices ſhall be bound, and which ſhall be ſo ſent unto him, and ſhall make an indorſement upon the ſaid indentures of the regiſtry thereof, ſubſcribed by the ſaid collector, without taking any fee or other reward for the ſame: And every ſuch collector, neglecting or refuſing to enter ſuch indentures, and indorſe the ſame, or making falſe entries, ſhall forfeit the ſum of five pounds for the uſe of the poor of the pariſh, from whence ſuch boy was bound apprentice: And all and every ſuch collector or collectors, or his or their lawful deputy or deputies, of the ſaid ſeveral and reſpective ports, ſhall from time to time tranſmit certificates in writing, under his or their hands, to the lord high admiral of *England*, or to the commiſſioners of the admiralty for the time being, containing the names and ages of every ſuch apprentice reſpectively, and to what ſhip he belongs; and upon receipt of ſuch certificates, protections ſhall, from time to time, be made and given for ſuch apprentices, till they attain their ſeveral and reſpective ages of eighteen years, without any fee or reward to be taken for the ſame; which certificates, ſo as aforeſaid to be given, are not required to be writ upon ſtampt paper or parchment.

Apprentices indentures to be ſent to the collector at the port whereunto his maſter belongs

Collector to enter the ſame *gratis*, &c.

Penalty on collector neglecting.

Lord admiral to grant protections for ſuch apprentices, *gratis*.

Sect. 6. " And be it further enacted by the authority aforeſaid, that all and every perſon and perſons, to whom any poor pariſh boy hath been, or hereafter ſhall be, put apprentice, according to the ſtatute made in the forty-third year of the reign of queen *Elizabeth*, may, with the conſent and approbation of two or more juſtices of the peace of the ſame county, and dwelling in or near the ſame pariſh where ſuch poor boy was bound apprentice, or by and with the conſent and approbation of any mayor, alderman, bailiff, or other chief officer or magiſtrate of any city, borough, or town corporate, where ſuch poor boy was bound apprentice, at the requeſt of the maſter or miſtreſs, then living, of ſuch apprentices, or his or their executors, adminiſtrators, or aſſigns, by indenture, aſſign and turn over ſuch poor boy apprentice to any maſter or owner of any ſuch ſhip or veſſel, uſing the ſea ſervice as aforeſaid, for and during the then remaining

43 Eliz. c. 2.

Pariſh boys bound apprentices, may be

turned over to the ſea ſervice.

ing time of his apprenticeſhip; which aſſignment and aſſignments of ſuch apprentices, ſo as aforeſaid, ſhall be, and are hereby declared to be good and effectual in the law: All which indentures of aſſignment are hereby directed to be regiſtred, and certificates thereof given and tranſmitted by ſuch collector, at the ſaid ſeveral ports where ſuch pariſh apprentices ſhall be ſo aſſigned over, and bound to the ſea ſervice, in manner and form aforeſaid; and upon receipt of ſuch certificates, protections ſhall from time to time be made and given for ſuch apprentices (ſo to be aſſigned over, as aforeſaid) till they ſhall attain their ſeveral and reſpective ages of eighteen years, without fee or reward for the ſame, in like manner as aforeſaid.

Indentures of aſſignment to be regiſtred. Altered by 4 Annæ, c. 19. ſ. 16.

Maſters of ſhips, &c. obliged to take ſuch apprentices.

Sect. 8. " And for the better providing ſuch apprentices with maſters for the ſaid ſervice: Be it further enacted by the authority aforeſaid, that all and every of her majeſty's ſubjects, being maſters or owners of any ſhip or ſhips, veſſel or veſſels, uſed in the ſea ſervice, as aforeſaid, of the burthen of thirty tun to the burthen of fifty tun, be obliged to take one ſuch apprentice, and one more for the next fifty tun, and one more for each and every hundred tun, ſuch ſhip or veſſel ſhall exceed the burthen of one hundred tun: And ſuch maſter or owner of any ſhip or veſſel, refuſing to take ſuch apprentice or apprentices, as aforeſaid, ſhall forfeit the ſum of ten pounds for the uſe of the poor of the pariſh from whence ſuch boy was bound apprentice.

By 4 Ann. c. 19 ſ. 16. no maſter ſhall be bound to take a boy under 13 years of age, &c.

And to give an account of their names, &c.

Sect. 9. " And be it further enacted, that every maſter or owner of ſuch ſhip or ſhips, veſſel or veſſels, ſo obliged to take ſuch apprentice or apprentices, after his arrival into any port or ports aforeſaid, and before he clears out of ſuch port, ſhall give an account in writing, under his hand, to the collector of ſuch port to which he belongs, containing the names and number of ſuch apprentices as are then remaining in his ſervice.

How apprentices ſhall be conveyed to the ports to which their maſters belong.

Sect. 10. " And for the better conveying and conducting all and every ſuch apprentice and apprentices, ſo to be bound as aforeſaid, to his and their reſpective maſter and maſters: Be it further enacted by the authority aforeſaid, that all and every ſuch apprentice and apprentices ſhall, from time to time, be ſeverally and reſpectively ſent, conducted, and conveyed to the ſeveral and reſpective ports, to which his or their maſter ſhall reſpectively belong, by the churchwardens and overſeers of the poor, or their agents, of the pariſh from whence ſuch apprentice is bound, and the charges thereof to be in the ſame manner, as is provided by an act of parliament made in the eleventh and twelfth years of the reign of his ſaid late majeſty king *William* the third, intituled, *An act for the more effectual puniſhment of vagrants, and ſending them whither by law they ought to be ſent.*

11 & 12 W. 3. c 18.

The counterparts of their indentures to be tranſmitted to the churchwardens, &c.

Sect. 11. " And it is hereby directed, that the counterpart of all and every ſuch indentures, to be executed by the ſeveral and reſpective maſters of all ſuch apprentices, ſhall be ſealed and executed in the preſence of, and atteſted by, the collector at the port aforeſaid (where ſuch apprentices ſhall be bound or aſſigned over) and the conſtable or other officer, who ſhall bring or convey ſuch apprentices to the ſaid ſeveral, and reſpective maſters; which conſtables or officers laſt mentioned ſhall tranſmit and

convey the counterparts of ſuch indentures to the churchwardens and overſeers of the ſeveral pariſhes from whence ſuch apprentices ſhall be bound, by the ſame ways and means as ſuch apprentice or apprentices were conveyed to the ſaid ſeveral and reſpective ports.

Juſtices to determine complaints between maſters and apprentices.

Sect. 12. " And be it further enacted by the authority aforeſaid, that two or more juſtices of the peace of the reſpective counties, and dwelling in or near any of the ports aforeſaid, and all mayors, aldermen, bailiffs, and other chief officers and magiſtrates of any city, borough, or town corporate, in or near adjoining to ſuch port or ports, to which ſuch ſhip or veſſel ſhall at any time arrive, ſhall have full power and authority, and are hereby authorized and impowered to inquire into, and examine, hear, and determine all complaints of hard or ill uſage from the ſeveral and reſpective maſters, to ſuch their apprentice and apprentices, ſo to be bound or aſſigned over, as aforeſaid, and alſo of all ſuch as already have, or who ſhall at any time hereafter voluntarily put themſelves apprentices to the ſea ſervice, as aforeſaid, and to make ſuch orders therein, as now they are enabled by law to do in other caſes between maſters and apprentices.

Collector to keep a regiſter, &c. and tranſmit a copy thereof to the quarter ſeſſions, &c. *gratis*. Penalty.

Sect. 13. " And be it further enacted by the authority aforeſaid, that every ſuch collector in every port or ports aforeſaid, ſhall in their ſeveral and reſpective ſtations, keep an exact regiſter, containing as well the number and burthen of all ſuch ſhips and veſſels, together with the maſters or owners names, as alſo the names of ſuch apprentices in each ſhip and veſſel belonging to their reſpective ports, and from what pariſhes and places ſuch apprentices were reſpectively ſent; and that ſuch collector ſhall tranſmit true copies of ſuch regiſter, ſigned by them, to the quarter ſeſſions, or to ſuch cities, boroughs, towns corporate, pariſhes, or places, when and ſo often as they ſhall be reaſonably required ſo to do; for which copy or copies, ſo to be tranſmitted as aforeſaid, no fee or reward ſhall be taken: And that every ſuch collector refuſing or wilfully neglecting to tranſmit ſuch copies, as aforeſaid, ſhall for every ſuch refuſal or neglect forfeit five pounds for the uſe of the poor of the pariſh, from whence ſuch boy was bound apprentice.

Officer to inſert on the cocquet, the number of men and boys on board, &c.

Sect. 14. " And be it further enacted, that every cuſtom-houſe officer or officers, at each and every of the ports aforeſaid, ſhall inſert, and are hereby required, from time to time, to inſert at the bottom of their cocquets, the number of men and boys on board the reſpective ſhips or veſſels, at their going out of every ſuch port, therein particularly deſcribing the apprentices by their reſpective names, ages, and the dates of their ſeveral indentures, for which no fee or reward ſhall be taken.

Perſons voluntarily binding themſelves apprentices to ſea ſervice, not to be impreſſed for three years. Explained by

Sect. 15. " And for the encouragement of ſuch as have, or ſhall voluntarily bind themſelves apprentices to the ſea ſervice: Be it further enacted by the authority aforeſaid, that all and every ſuch perſon and perſons, who have or ſhall ſo voluntarily, and of his or their own accord, bind or put him or themſelves apprentice to any ſuch maſters or owners of any ſhip or veſſel, as aforeſaid, ſhall not be compelled or impreſt into her majeſty's ſea ſervice, or the ſea ſervice of her majeſty's heirs or ſucceſſors, for and during the term of three years, to be accounted from the dates of the reſpective

4 Ann c. 19. f. 17. Indentures to be regiſtred, and protections given for the ſaid three years.

reſpective indentures of ſuch voluntary apprentice or apprentices; all which indentures are hereby directed to be regiſtred, and certificates thereof given and tranſmitted by ſuch collector at the ſaid ſeveral ports, where ſuch apprentices already have become ſo bound, or that hereafter ſhall ſo bind themſelves, in manner and form as aforeſaid; upon receipt of which ſaid ſeveral certificates, protections ſhall, from time to time, be made and given, for the ſaid firſt three years of their ſeveral reſpective apprenticeſhips, without either fee or reward for the ſame.

When ſuch apprentices ſhall be impreſſed, maſters to have able ſeamens wages for them.

Sect. 17. "And whereas owners and maſters of merchant ſhips are at great charge in educating and bringing up the pariſh children, till they come to the age of eighteen years, and other voluntary apprentices three years, at which time they are capable to ſerve in her majeſty's ſhips of war: Be it enacted by the authority aforeſaid, when ſuch apprentices ſhall be impreſſed, or voluntarily enter themſelves into her majeſty's ſervice, the ſaid owners or maſters of ſuch apprentices, their executors, adminiſtrators, or aſſigns, ſhall be intitled to able ſeamens wages for ſuch of their aprentices, as ſhall upon due examination be found qualified for the ſame, notwithſtanding their indentures of apprenticeſhip.

Penalties and forfeitures, how to be levied.

Sect. 18. "And be it further enacted by the authority aforeſaid, that all the penalties and forfeitures directed by this act ſhall, by warrant under the hands and ſeals of any two or more juſtices of the peace of the ſame county, city, borough, or town corporate, be levied by diſtreſs and ſale of the goods and chattels of the offender, which ſale ſhall be good in the law againſt ſuch offender."

4 Ann. c. 19. 2 & 3 Ann. cap. 6.

Stat. 4 *Ann. c.* 19. [*A. D.* 1705.] *ſect.* 16. "And whereas by an act made in the ſecond year of her majeſty's reign, intituled, *An act for the encreaſe of ſeamen, and better encouragement of navigation, and the ſecurity of the coal-trade*, proviſion is made for putting out of pariſh children apprentices to maſters of trading ſhips and veſſels at the age of ten years: It is hereby enacted, that no ſuch maſter ſhall be obliged to take any ſuch apprentice under the age of thirteen years, or who ſhall not appear to be fitly qualified both as to health and ſtrength of body for that ſervice; and any widow of the maſter of ſuch ſhip or veſſel, or the executor or adminiſtrator of ſuch maſter, who ſhall have been obliged to take ſuch pariſh-boys apprentice to them, ſhall have the ſame power of aſſigning over ſuch apprentices to any other maſters of ſhips or veſſels, who have not their complement of apprentices required by the ſaid recited act, to be entertained by them, as is given by the ſaid act to ſuch perſons as have taken children apprentices, in purſuance of the ſtatute made in the forty-third year of queen *Elizabeth*."

No maſter of ſhip to take apprentice under thirteen years old.

43 Eliz. c. 2.

8 Ann. c. 9.

Stat. 8 *Ann. cap.* 9. [*A. D.* 1709. *intituled*,] "An act for laying certain duties upon candles, and certain rates upon monies to be given with clerks, and apprentices, towards raiſing her majeſty's ſupply, for the year 1710."

Sect. 32. " And be it further enacted by the authority aforesaid, that there shall be, throughout the kingdom of *Great Britain*, raised, collected and paid to her majesty, her heirs and successors, the further rates, duties and sums of money following, that is to say, the duty, rate, or sum of six pence, for every twenty shillings, of every sum of fifty pounds or under; and the duty, rate or sum of one shilling, for every twenty shillings, of all and every sum and sums amounting to more than fifty pounds, which shall, at any time or times, from and after the first day of *May* one thousand seven hundred and ten, and during the term of five years, from thence next ensuing, be given, paid, contracted or agreed for, with or in relation to every clerk, apprentice, or servant, which shall be, within the kingdom of *Great Britain*, put or placed to or with any master or mistress to learn any profession, trade, or employment, and proportionally for greater or lesser sums; which said duties, rates, and sums shall be paid by the said masters or mistresses respectively.

From 1 May 1710. 6d. for every 20 s. of 50 l. or under, and 12 d. for every sum of above 50 l to be paid for every clerk or apprentice put out, for five years; made perpetual by 9 Ann. c. 21. sect. 7. To be paid by the master.

Sect. 35. " And be it further enacted by the authority aforesaid, that from and after the said first day of *May* one thousand seven hundred and ten, the full sum or sums of money received, or in any wise directly or indirectly given, paid, agreed, or contracted for, during the term aforesaid, with or in relation to every such clerk, apprentice, and servant, as aforesaid, shall be truly inserted and written in words at length, in some indenture or other writing, which shall contain the covenants, articles, contracts, or agreements, relating to the service of such clerk, apprentice, or servant, as aforesaid, and shall bear date upon the day of the signing, sealing, or other execution of the same; upon pain, that every master or mistress, to or with whom, or to whose use, any sum of money whatsoever shall be given, paid, secured, or contracted, for or in respect of any such clerk, apprentice, or servant as aforesaid, which shall not be truly and fully so inserted and specified in some such indenture, or other writing, shall, for every such offence, forfeit double the sum so given, paid, secured, or contracted for; the one moiety of which forfeitures, shall be to her majesty, her heirs or successors, and the other moiety, with full costs, to any person or persons who shall inform and sue for the same, by action of debt, bill, plaint, or information, in any court of record at *Westminster*, or in the *Exchequer* of *Scotland*, at any time after the executing, making, or signing any such indenture or writing, or making any such contract or agreement, and within one year after the time limited or appointed for the service of any such clerk, apprentice, or servant, to or with such master or mistress, shall be expired.

The full sum given with an apprentice, &c. to be inserted in the indenture, &c. on forfeiture of double the sum.

Sect. 36. " And be it further enacted by the authority aforesaid, that the said commissioners for managing the said duties on stampt vellum, parchment and paper, shall, before the said first day of *May* one thousand seven hundred and ten, provide two new stamps to be used in pursuance of this act, (over and besides the stamps heretofore requisite, for or in respect of such indenture, or other writing, by virtue of the statutes in that case made,) the one of which new stamps shall denote the said duty of six pence in the pound, and the other of the said new stamps shall denote the

Two new stamps to be provided, &c.

the ſaid duty of one ſhilling in the pound; and that all ſuch indentures, or other writings, containing the ſums truly given, paid, agreed, or contracted for, as aforeſaid, which ſhall, within or during the ſaid term of five years, be entred into, executed, or ſigned, within the cities of *London* or *Weſtminſter*, or within the limits of the bills of mortality, ſhall be brought to the head-office for ſtamping or marking of vellum, parchment and paper, and the duties hereby charged and payable for the ſums therein to be inſerted, as aforeſaid, ſhall be paid to the receiver general for the time being, of the ſaid duties on ſtampt vellum, parchment and paper; and upon ſuch payment thereof, the ſame ſhall be ſtamped with one of the ſaid new ſtamps, as the caſe ſhall require, within one month after the reſpective dates thereof.

Indentures to be brought to the head-office, &c. in two months after date,

Sect. 37. "And be it enacted by the authority aforeſaid, that all the ſaid indentures, and other writings, which ſhall or ought to contain the whole ſum truly given, paid, agreed, or contracted for, as aforeſaid, which ſhall, within or during the ſaid term of five years, be entred into, executed, or ſigned, in any part of *Great Britain*, (not being within the limits of the ſaid weekly bills of mortality) ſhall (at the option of the party concerned) be brought or ſent, either to the head-office within the limits of the ſaid weekly bills, or elſe to ſome of the collectors, appointed or to be appointed for her majeſty's duties upon ſtampt vellum, parchment and paper, who ſhall reſide without the limits of the ſaid weekly bills, in *England*, *Wales*, or the town of *Berwick* upon *Tweed*, or to ſome of the officers to be appointed for the duties by this act granted in *Scotland*, within two months after the date, execution, or ſigning of every ſuch indenture, or writing reſpectively: And upon producing of every ſuch indenture or writing, either at the ſaid head-office, or to ſuch collector or other officer, as aforeſaid, her majeſty's duties hereby granted, ſhall be paid, either to the ſaid receiver general at the ſaid head-office, or to ſuch collector or other officer as aforeſaid: And in caſe the ſaid payment ſhall be made to the immediate hands of the receiver general in the ſaid head-office, for her majeſty's uſe, then the indenture or writing, for which ſuch payment ſhall be made, ſhall be forthwith ſtamped with one of the ſaid new ſtamps, as the caſe ſhall require: And in caſe ſuch payment ſhall be made to the hands of ſuch collector, or other officer, without the limits of the ſaid weekly bills, the ſame collector or other officer, is hereby required to endorſe on ſuch indenture, or other writing, a receipt for the monies ſo paid, in words at length, bearing date the day on which ſuch payment ſhall be made, and to ſubſcribe his name thereto, (to the intent that he may thereby be charged with every ſum ſo paid to him) and forthwith deliver back the ſaid indenture or writing ſo endorſed to the bringer thereof.

and there the duty to be paid, and indenture ſtampt, &c. or the collector to indorſe a receipt, &c.

Within what time indentures ſhall be ſtampt.

Sect. 38. "And it is hereby enacted by the authority aforeſaid, that every ſuch indenture, or writing ſo end rſed (in caſe the ſame be entred into, executed or ſigned within the ſpace of fifty miles, to be computed from the limits of the ſaid weekly bills of mortality) ſhall, within three months after the date or making thereof, and if the ſame be entred into, executed or ſigned in any part of *Great Britain* at a greater diſtance from the

ne limits aforeſaid, ſhall, within ſix months after the date or making thereof, be brought or ſent to the ſaid head-office, where the ſame (being produced with the ſaid receipt endorſed) ſhall be immediately ſtamped with one of the ſaid new ſtamps, as the caſe ſhall require, by the officer appointed, or to be appointed, for that purpoſe.

Indentures, in which the full ſum received, is not charged, &c. void;

Sect. 39. " And be it further enacted by the authority aforeſaid, that all ſuch indentures or writings, as aforeſaid, wherein ſhall not be truly inſerted and written the full ſum and ſums of money received, or in any wiſe directly or indirectly given, paid, ſecured, or contracted for, with, or in relation to ſuch clerk, apprentice, or ſervant, as aforeſaid, or whereupon the duties payable by this act ſhall not be duly paid, or lawfully tendred, or which ſhall not be ſtamped, or lawfully tendred to be ſtamped, according to the tenor and true meaning of this act, within the reſpective times herein for that purpoſe ſeverally and reſpectively limited, ſhall be void, and not available in any court or place, or to any purpoſe whatſoever; and the clerk, apprentice, or ſervant, whom the ſame ſhall concern or relate to, ſhall in ſuch caſe be utterly incapable of being free of any city, town, corporation, or company, and of following or exerciſing the intended profeſſion, trade, or employment; any charter, law, or cuſtom to the contrary notwithanding."

And clerk, &c. incapacitated.

Pariſhes or publick charities not charged.

Sect. 40. " Provided always, that nothing in this act contained ſhall be conſtrued to extend to charge any maſter or miſtreſs with the payment of any of the ſaid duties, in reſpect of any money by him or her received with any apprentice or ſervant, who ſhall be put or placed out at the common or publick charge of any pariſh or townſhip, or by or out of any publick charity, or to require the ſtamping with any ſuch new ſtamp, as aforeſaid of any indenture, articles, covenant, agreement, or contract relating to ſuch apprentice or ſervant as laſt mentioned; any thing herein contained to the contrary notwithſtanding.

No indenture to be admitted in evidence, unleſs oath made, that the ſums were really paid, &c.

Sect. 43. " And be further enacted by the authority aforeſaid, that no indenture or writing required by this act to be ſtamped, as aforeſaid, ſhall be given or admitted in evidence in any ſuit to be brought by any of the parties thereunto, unleſs ſuch party, on whoſe behalf the ſame ſhall be given or admitted in evidence, do firſt make oath, that to the beſt of his or her knowledge, the ſum or ſums therein for that purpoſe inſerted or mentioned was or were really and truly all that was directly or indirectly given, paid, ſecured, or contracted for, on behalf or reſpect of ſuch clerk, apprentice, or ſervant, to or for the benefit of the maſter or miſtreſs, to or with whom ſuch clerk, apprentice, or ſervant was put or placed.

Where any thing ſhall be given to any maſter, not being money, the full value of ſuch thing to be anſwered for the duties.

Sect. 45. " And be it declared and further enacted by the authority aforeſaid, that from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ten, and during the ſaid five years, where any thing or things, not being lawful money of *Great Britain*, ſhall directly or indirectly, be given, aſſigned, conveyed, delivered, contracted for, or ſecured, to or for the uſe or benefit of any maſter or miſtreſs, with or in reſpect of any ſuch clerk, apprentice, or ſervant, for whom a duty is chargeable by this act; the duties hereby granted and laſt mentioned, ſhall be anſwered and paid,

for

for the full value or values of ſuch thing or things, and the ſame duties for the ſaid values, ſhall be ſecured and anſwered in the ſame manner and form, and under the like pains, penalties, forfeitures and incapacities, as are before in this act provided for ſecuring the ſaid rates upon monies given or paid, or agreed to be given or paid, with ſuch clerks, apprentices or ſervants, as aforeſaid.

9 Ann. c. 21. Maſters hereafter omitting to forfeit 50 l.

Stat. 9 *Ann. c.* 21. [*A. D.* 1710.] *ſect.* 66. "And it is hereby further enacted by the authority aforeſaid, that if any maſter or miſtreſs ſhall hereafter neglect to pay the ſaid rates or duties (upon monies given, paid, or contracted for with clerks and apprentices) within the reſpective times herein, and by the ſaid former act for that purpoſe limited, according to the true intent and meaning of the ſame, every ſuch maſter and miſtreſs ſhall, for every ſuch neglect, forfeit the ſum of fifty pounds; the one moiety thereof to her majeſty, her heirs and ſucceſſors, and the other moiety thereof with full coſts of ſuit, to ſuch perſon or perſons as ſhall inform and ſue for the ſame, in any of the courts at *Weſtminſter*, for ſuch neglect committed in *England*, *Wales*, or *Berwick* upon *Tweed*, or in the court of exchequer in *Scotland*, for any ſuch neglect there, by action of debt, bill, plaint or information, wherein no eſſoin, protection, or wager of law, or any more than one imparlance ſhall be allowed.

18 Geo. 2. c. 22. Further penalties for not paying the ſaid duties;

Stat. 18 *Geo.* 2. *c.* 22. [*A. D.* 1745.] "*ſect.* 24. And for the better enforcing the payment of the rates and duties directed to be levied and paid by the acts; [*viz.* 8 *Ann. c.* 9. and 9 *Ann. c.* 21.] it is hereby further enacted by the authority aforeſaid, that from and after the twenty-fourth day of *June* in the year of our lord one thouſand ſeven hundred and forty-five, if any maſter or miſtreſs ſhall neglect to pay the ſaid rates and duties for clerks, apprentices or ſervants, within the reſpective times, in and by the former acts limited and appointed in that behalf, according to the true intent and meaning of the ſame; every ſuch maſter and miſtreſs ſhall, for every ſuch neglect, forfeit and pay double the rates and duties charged and directed to be paid and levied by the ſaid former acts, or either of them (over and above all penalties and forfeitures thereby inflicted) for all monies which ſhall at any time or times, after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and forty-five, be given, paid, contracted or agreed for, with or in relation to every ſuch clerk, apprentice or ſervant; which ſaid penalties and forfeitures, directed to be levied by this preſent act, ſhall be paid by the ſaid maſters or miſtreſſes reſpectively, and ſhall be recovered, paid and applied, in ſuch and the ſame manner as any penalties or forfeitures, inflicted by the ſaid former acts, or either of them, are thereby directed to be recovered, levied, paid or applied.

how to be recovered.

20 Geo. 2. c. 19.

Stat. 20 *Geo.* 2. *c.* 19. [*A. D.* 1747.] *Made, among other purpoſes,* "for the better regulation of certain apprentices."

Sect. 3. And be it further enacted by the authority aforeſaid, that it ſhall and may be lawful to and for any two or more ſuch juſtices, upon any complaint

complaint or application by any apprentice, put out by the pariſh, or any other apprentice, upon whoſe binding out no larger a ſum than five pounds of lawful *Britiſh* money was paid, touching or concerning any miſuſage, refuſal of neceſſary proviſion, cruelty, or other ill-treatment of or towards ſuch apprentice, by his or her maſter or miſtreſs, to ſummon ſuch maſter or miſtreſs to appear before ſuch juſtices at a reaſonable time to be named in ſuch ſummons; and ſuch juſtices ſhall and may examine into the matter of ſuch complaint; and upon proof thereof made upon oath, to their ſatisfaction (whether the maſter or miſtreſs be preſent, or not, if ſervice of the ſummons be alſo, upon oath, proved) the ſaid juſtices may diſcharge ſuch apprentice, by warrant or certificate under their hands and ſeals; for which warrant or certificate no fees ſhall be paid.

Juſtices upon complaint of certain apprentices, to ſummon the maſter, &c.

and, upon ſatisfactory proof, to diſcharge the apprentice.

Sect. 4. "And be it further enacted by the authority aforeſaid, that it ſhall and may be lawful to and for ſuch juſtices, upon application or complaint made upon oath, by any maſter or miſtreſs, againſt any ſuch apprentice, touching or concerning any miſdemeanor, miſcarriage or ill-behaviour, in ſuch his or her ſervice (which oath ſuch juſtices are hereby impowered to adminiſter) to hear, examine, and determine the ſame, and to puniſh the offender by commitment to the houſe of correction, there to remain and be corrected, and held to hard labour for a reaſonable time, not exceeding one calendar month, or otherwiſe by diſcharging ſuch apprentice, in manner and form before mentioned."

Juſtices upon complaint of maſters againſt apprentices, and proof upon oath, to puniſh the offender by commitment, &c.

Sect. 5. "Provided nevertheleſs, that if any perſon or perſons ſhall think himſelf, herſelf, or themſelves aggrieved by ſuch determination, order, or warrant of ſuch juſtice or juſtices as aforeſaid (ſave and except any order of commitment) he, ſhe, or they may appeal to the next general quarter ſeſſions of the peace to be held for the county, riding, liberty, city, town corporate, or place where ſuch determination or order ſhall be made; which ſaid next general quarter ſeſſions is hereby impowered to hear and finally determine the ſame, and to give and award ſuch coſts to any of the reſpective perſons, appellant or reſpondent, as the ſaid ſeſſions ſhall judge reaſonable, not exceeding forty ſhillings; the ſame to be levied by diſtreſs and ſale, in manner before mentioned."

Perſons aggrieved may appeal. Exception.

Coſts not to exceed 40 s.

Sect. 6. "Provided alſo, and be it further enacted by the authority aforeſaid, that no writ of *certiorari*, or other proceſs, ſhall iſſue or be iſſuable to remove any proceedings whatſoever, had in purſuance of this act, into any of his majeſty's courts of record at *Weſtminſter*.

No writ of certiorari.

Stat. 20 *Geo.* 2. *cap.* 45. [*A. D.* 1747.] *ſect.* 4. *recites the act* 8 *Ann. c.* 9. 9 *Ann. c.* 21. *and* 18 *Geo.* 2. *c.* 22. *and gives further time for payment of duties omitted to be paid for the indentures of clerks and apprentices, upon payment of double duties*, &c.

20 Geo. 2. c. 45.

Sect. 5. "And it is hereby further enacted, that from and after the twenty-fourth day of *June* one thouſand ſeven hundred and forty-ſeven, if any maſter or miſtreſs, who, by reaſon of ſuch neglect as aforeſaid, ſhall become liable to forfeit and pay the ſaid double rates and duties as aforeſaid,

Upon payment of double duties and tender of the contracts to be

ſtamped within 2 years after the end of the apprenticeſhip, &c.

ſaid, ſhall reſpectively pay the ſaid double rates and duties unto the perſon or perſons to whom the ſame ought to be paid in purſuance of the ſaid former acts, and alſo tender the indentures or contracts to be ſtamped at any time within two years after the end or determination of the apprenticeſhip or ſervice of any ſuch clerk, apprentice, or ſervant reſpectively, and before any ſuit or proſecution ſhall have been commenced for recovering any of the penalties and forfeitures inflicted and incurred by the ſaid former acts, or any of them; then, and in ſuch caſe, the indentures or contracts of ſuch clerk, apprentice, or ſervant reſpectively ſhall be good and available in law and equity, and may be given in evidence in any court whatſoever; and the clerks, apprentices, or ſervants therein named, ſhall be capable of following and exerciſing their reſpective intended trades or imployments, as fully as if the rates and duties ſo omitted, had been duly paid within the reſpective times in the ſaid former acts, or any of them, limited or appointed; and all and every perſon and perſons, who ſhall have incurred any penalties by the omiſſions aforeſaid, upon payment of ſuch double rates and duties as aforeſaid, within the reſpective times herein laſt before limited in that behalf, ſhall be, and they are hereby acquitted and diſcharged of and from the ſaid penalties and forfeitures; any thing in the ſaid former acts, or any of them, contained to the contrary notwithſtanding."

the contracts to be good, &c.

Penalties incurred for omiſſions diſcharged upon payment of double duties.

Sect. 6. "And it is hereby further enacted, that if any maſter or miſtreſs ſhall, by reaſon of any ſuch neglect as aforeſaid, become liable to forfeit and pay ſuch double rates and duties as aforeſaid, and any ſuch clerk, apprentice, or ſervant reſpectively, ſhall and do, at any time after ſuch forfeiture incurred, either in the preſence of one or more credible witneſs or wineſſes, or by writing under the hand of ſuch clerk, apprentice, or ſervant reſpectively, ſigned in the preſence of one or more credible witneſs or witneſſes, require his or her maſter or miſtreſs reſpectively to pay the ſaid double rates or duties ſo incurred as aforeſaid, and ſuch maſter or miſtreſs ſhall not, within three months after ſuch requeſt, pay the ſame, and any ſuch clerk, apprentice, or ſervant ſhall, at any time within two years after the determination of his clerkſhip, apprenticeſhip, or ſervitude, pay the ſaid double rates and duties ſo forfeited and incurred, and not paid by his or her maſter or miſtreſs reſpectively as aforeſaid; then, and in ſuch caſe, it ſhall and may be lawful to and for any ſuch clerk, apprentice, or ſervant, within three months after ſuch payment of the ſaid double rates and duties by him, her, or them, as aforeſaid, to demand of his or her maſter or miſtreſs, or his, her, or their executors or adminiſtrators, double the ſum or ſums of money, or other conſideration reſpectively given, paid, and agreed, or contracted to be paid to ſuch maſter or miſtreſs, for or in reſpect of ſuch clerkſhip, apprenticeſhip, or ſervitude; and in caſe ſuch ſum or ſums of money ſhall not be paid within three months after ſuch demand thereof made, it ſhall and may be lawful to and for any ſuch clerk, apprentice, or ſervant, to ſue for and recover the ſame, with full coſts of ſuit, againſt ſuch maſter or miſtreſs, his, her, or their executors or adminiſtrators, by action of debt, bill, plaint, or information, in any of his majeſty's courts of record at *Weſtminſter*, wherein no eſſoin, protection, or wager of law, or more than one imparlance, ſhall

Apprentices, &c. paying the double duties forfeited by their maſters, &c.

to be reimburſed double the ſum paid in reſpect of ſuch apprenticeſhip, &c.

with coſts;

ſhall be allowed; and every ſuch clerk, apprentice, or ſervant, ſo paying ſuch double rates or duties as aforeſaid, ſhall and may, immediately after payment thereof reſpectively, and upon ſignifying, by writing under his or her hand, that he or ſhe deſires to be diſcharged from his, her, or their clerkſhip, apprenticeſhip, and ſervice reſpectively, ſhall be accordingly diſcharged from the ſame reſpectively, and from all actions, penalties, forfeitures, and damages, for not ſerving the time for which he, ſhe, or they were reſpectively bound, contracted for, or agreed to ſerve ſuch maſter or miſtreſs reſpectively.

and be diſcharged from their apprenticeſhip, if they require it;

Sect. 7. "Provided always, and it is hereby further enacted and declared, that every ſuch clerk, apprentice, or ſervant, ſhall avail him or herſelf, and have ſuch and the ſame benefit and advantage of the time he or ſhe ſhall reſpectively have continued with and ſerved ſuch maſter or miſtreſs reſpectively, as he or ſhe could or might have done, in caſe of any aſſignment or turning over to any new or other maſter or miſtreſs."

and to have the ſame benefit of their ſervice, as if they had been turned over.

Sect. 8. "Provided always, that in caſe where any proſecution ſhall be commenced againſt any maſter or miſtreſs, for recovering any of the penalties and forfeitures inflicted and incurred by the ſaid former acts, or any of them, the clerk, apprentice, or ſervant of ſuch maſter or miſtreſs reſpectively, ſhall pay ſuch double rates and duties, at any time within two years after the end of his, her, or their clerkſhip, apprenticeſhip, or ſervitude, and every ſuch clerk, apprentice, or ſervant reſpectively, ſhall, upon payment of ſuch double rates and duties as aforeſaid, be capable and qualified to follow and exerciſe his, her, and their reſpective trades and employments; and the indentures or contracts of ſuch clerk, apprentice, and ſervant reſpectively, ſhall be good and available in law and equity, and may be given in evidence in any court whatſoever; any thing in this or the ſaid former acts, or any of them, contained to the contrary notwithſtanding."

Apprentices paying the double rates where proſecutions are commenced againſt their maſters,

to be qualified to follow their trades, &c.

Stat. 5 *Geo.* 3. *c.* 46. [*A. D.* 1765. Intituled] "An act for altering the ſtamp duties upon admiſſions into corporations or companies; and for further ſecuring and improving the ſtamp duties in *Great Britain*."

5 Geo. 3. c. 46.

Sect. 18. "And whereas by an act of parliament made in the ninth year of the reign of her late majeſty Queen *Anne*, intituled, *An act for the laying certain duties upon candles; and certain rates upon monies to be given with clerks and apprentices, towards raiſing her majeſty's ſupply for the year one thouſand ſeven hundred and ten*, the duty, rate or ſum of ſixpence, for every twenty ſhillings of every ſum of fifty pounds or under; and the duty, rate or ſum of one ſhilling for every twenty ſhillings of all and every ſum and ſums amounting to more than fifty pounds, which ſhould be given, paid, contracted, or agreed for, with, or in relation to, every clerk, apprentice, or ſervant, which ſhould be, within the kingdom of *Great Britain*, put or placed to or with any maſter or miſtreſs, to learn any profeſſion, trade, or employment, and proportionably for greater or leſſer ſums, was charged

Clauſe in act 9 Ann.

and impoſed on the ſaid maſters or miſtreſſes reſpectively: and whereas great inconveniencies ariſe in collecting the ſaid duties, for want of proper entries being made and kept by the chamberlain and other proper officers of cities and corporate towns, and companies, of the names of the maſter or miſtreſs, and clerk, apprentice, or ſervant; the place of abode of ſuch maſter or miſtreſs; the date of the indenture, covenant, articles, or contract, the ſum of money given, paid, contracted, or agreed for, and the profeſſion, trade, or employment, which ſuch clerk, apprentice or ſervant, is to learn: for remedying whereof, be it further enacted and declared by the authority aforeſaid, that from and after the ſaid fifth day of *July* one thouſand ſeven hundred and ſixty-five, every chamberlain and other proper officer of every city and corporate town, and company, within the kingdom of *Great Britain*, where any clerk or apprentice, or ſervant, obtains his freedom by ſervitude, ſhall fairly write and enter in ſome book or books to be kept for that purpoſe, the names of all ſuch clerks, apprentices, and ſervants, as ſhall be put or placed out within the juriſdiction of ſuch city or town corporate, and alſo the names and places of abode of the maſters or miſtreſſes, and the ſums of money given, paid, contracted, or agreed for, with, or in relation to, ſuch clerks, apprentices, or ſervants, and the profeſſion, trade, or employment, which they are reſpectively to learn; and the dates of the indentures, covenants, articles, or contracts, by which ſuch clerks, apprentices, or ſervants, are reſpectively put and placed out; and if any chamberlain or other proper officer ſhall neglect or refuſe to make any ſuch entry, in manner as above ſet forth, he ſhall, for every ſuch offence, forfeit the ſum of twenty pounds.

Where the freedom of any city or company is obtained by ſervitude, the chamberlain, or other proper officer, is to enter the names of all perſons put out clerks, apprentices, or ſervants, with the names and abode of the maſters, the apprentice fees, and dates of the indentures, &c. on forfeiture of 20 l. and the following notice to be printed under all printed indentures, &c.

Sect. 19. "And be it further declared and enacted by the authority aforeſaid, that all printed indentures, covenants, articles, or contracts, for binding clerks or apprentices in *Great Britain*, after the fifth day of *July* one thouſand ſeven hundred and ſixty-five, ſhall have the following notice, or memorandum, printed under the ſame; *videlicet*,

The notice.

THE *indenture, covenant, article, or contract, muſt bear date the day it is executed; and what money or other thing is given or contracted for with the clerk or apprentice, muſt be inſerted in words at length; and the duty paid to the ſtamp office, if in* London, *or within the weekly bills of mortality, within one month after the execution, and if in the country, and out of the ſaid bills of mortality, within two months, to a diſtributor of the ſtamps, or his ſubſtitute; otherwiſe the indenture will be void, the maſter or miſtreſs forfeit fifty pounds, and another penalty, and the apprentice be diſabled to follow his trade or be made free.*

And if any printer, ſtationer or other perſon or perſons, ſhall ſell, or cauſe to be ſold, any ſuch indenture, covenant, article, or contract, without ſuch notice or memorandum being printed under the ſame; then, and in every ſuch caſe, ſuch printer, ſtationer, or other perſon or perſons, ſhall, for every ſuch offence, forfeit the ſum of ten pounds.

on forfeiture of 10 l.

Stat.

Stat. 6 *Geo.* 3. *c.* 25. [*A. D.* 1765. *intituled,*] "An act for better regulating apprentices, and perſons working under contract." 6 Geo. 3. c. 25.

"Whereas perſons employed in ſeveral manufactories of this kingdom frequently take apprentices who are very young, and, for ſeveral years of their apprenticeſhips, are rather a burthen than otherwiſe to their maſters: And whereas it frequently happens that ſuch apprentices, when they might be expected to be uſeful to their maſters, abſent themſelves from their ſervice: And whereas the laws in being are not ſufficient to prevent theſe inconveniencies: For remedy whereof, may it pleaſe your majeſty, that it may be enacted; and be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, that from and after the twenty-fourth day of *June* one thouſand ſeven hundred and ſixty-ſix, if any apprentice ſhall abſent himſelf from his maſter's ſervice before the term of his apprenticeſhip ſhall be expired, every ſuch apprentice ſhall, at any time or times thereafter, whenever he ſhall be found, be compelled to ſerve his ſaid maſter for ſo long a time as he ſhall have ſo abſented himſelf from ſuch ſervice, unleſs he ſhall make ſatisfaction to his maſter for the loſs he ſhall have ſuſtained by his abſence from his ſervice; and ſo, from time to time, as often as any ſuch apprentice ſhall, without leave of his maſter, abſent himſelf from his ſervice before the term of his contract ſhall be fulfilled: And in caſe any ſuch apprentice ſhall refuſe to ſerve as hereby required, or to make ſuch ſatisfaction to his maſter, ſuch maſter may complain, upon oath, to any juſtice of the peace of the county or place where he ſhall reſide, which oath ſuch juſtice is hereby impowered to adminiſter, and to iſſue a warrant under his hand and ſeal, for apprehending any ſuch apprentice; and ſuch juſtice, upon hearing the complaint, may determine what ſatisfaction ſhall be made to ſuch maſter by ſuch apprentice; and in caſe ſuch apprentice ſhall not give ſecurity to make ſuch ſatisfaction according to ſuch determination, it ſhall and may be lawful for ſuch juſtice to commit every ſuch apprentice to the houſe of correction for any time not exceeding three months." Preamble. Juſtices impowered to oblige apprentice abſenting before expiration of his apprenticeſhip, to ſerve for ſuch term as he ſhall abſent, or to make ſatisfaction;

Sect. 2. "Provided always, that nothing in this act contained ſhall extend to any apprentice, whoſe maſter ſhall have received with ſuch apprentice the ſum of ten pounds." except as to apprentices paying 10 l. Fee;

Sect. 3. "Provided alſo, that no apprentice ſhall be compelled to ſerve for any time or term, or to make any ſatisfaction to any maſter, after the expiration of ſeven years next after the end of the term for which ſuch apprentice ſhall have contracted to ſerve; any thing herein contained to the contrary notwithſtanding." or where 7 years ſhall have elapſed.

Sect. 4. "And whereas it frequently happens that artificers, callico printers, handicraftſmen, miners, colliers, keelmen, pitmen, glaſſmen, potters, labourers, and others, who contract with perſons for certain terms, do leave their reſpective ſervices before the times of their contracts are fulfilled; to the great diſappointment and loſs of the perſons with whom they ſo contract: For remedy whereof, be it further enacted by the authority aforeſaid, that from and after the ſaid twenty-fourth day of *June* Juſtices impowered to grant warrants

against artificers and others not fulfilling their contract, or being guilty of any misdemeanor,

June one thouſand ſeven hundred and ſixty-ſix, if any artificer, callico printer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, labourer, or other perſon, ſhall contract with any perſon whomſoever for any time or term whatſoever, and ſhall abſent himſelf from his ſervice before the term of his contract ſhall be compleated, or be guilty of any other miſdemeanor, that then, and in every ſuch caſe, it ſhall and may be lawful for any juſtice of the peace of the county or place where any ſuch artificer, callico printer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, labourer or other perſon, ſhall be found, and ſuch juſtice is hereby authorized and impowered, upon complaint thereof made upon oath to him by the perſon with whom ſuch artificer, callico printer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, labourer, or other perſon, ſhall have ſo contracted, or by his or her ſteward or agent, which oath ſuch juſtice is hereby impowered to adminiſter, to iſſue his warrant for the apprehending every ſuch artificer, callico printer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, labourer, or other perſon, and to examine into the nature of the complaint; and if it ſhall appear to ſuch juſtice that any ſuch artificer, callico printer, handicraftſman, miner, collier, keelman, pitman, glaſſman, potter, labourer, or other perſon, ſhall not have fulfilled ſuch contract, or hath been guilty of any miſdemeanor, it ſhall and may be lawful for ſuch juſtice to commit every ſuch perſon to the houſe of correction for the county or place where ſuch juſtices ſhall reſide, for any time not exceeding three months, nor leſs than one month.

and upon conviction to commit the offender.

Perſons aggrieved by the order of a juſtice (except in caſes of commitment) may appeal; giving notice to the juſtice, and entering into recognizance, &c.

Sect. 5. "Provided always, that if any perſon ſhall think himſelf aggrieved by ſuch determination, order, or warrant, of any juſtice of the peace as aforeſaid, except an order of commitment, every ſuch perſon may appeal to the next general quarter ſeſſions of the peace to be held for the county or place where ſuch determination or order ſhall be made; ſuch perſon giving ſix days notice of his intention of bringing ſuch appeal, and of the cauſe and matter thereof, to ſuch juſtice of the peace and the parties concerned; and entering into a recognizance within three days after ſuch notice, before ſome juſtice of the peace for ſuch county or place, with ſufficient ſurety, conditioned to try ſuch appeal at, and abide the order or judgment of, and pay ſuch coſts as ſhall be awarded by, the juſtices at ſuch quarter ſeſſions; which ſaid juſtices, at their ſaid ſeſſions, upon due proof of ſuch notice being given, and of entering into ſuch recognizance as aforeſaid, ſhall and are hereby directed to proceed in, hear, and determine, the cauſes and matters of all ſuch appeals; and ſhall give ſuch relief and coſts to the parties appealing or appealed againſt, as they, in their diſcretion, ſhall judge proper and reaſonable; and their judgements and orders therein ſhall be final and concluſive to all parties concerned.

Juſtices at the quarter ſeſſions impowered to determine the appeal, and award coſts.

Limitation of this act with reſpect to the ſtannaries, and city of London.

Sect. 6. "Provided alſo, that nothing in this act contained ſhall extend to the ſtannaries in the counties of *Devon* and *Cornwall*, or to impeach or leſſen the juriſdiction of the chamberlain of the city of *London*, or of any other court within the ſaid city, touching apprentices.

Stat.

Stat. 7 *Geo.* 3. *c.* 21. [*A. D.* 1766. *intituled*,] "An act to obviate inconveniencies which may arise with respect to the execution of several acts of parliament in such cities, boroughs, towns corporate, franchises, and liberties, as have only one justice of the peace of the *quorum* qualified to act within the same." 7 Geo. 3. c. 21.

"Whereas authority is given by divers acts of parliament to two or more justices of the peace, whereof one or more are to be of the *quorum*: And whereas many inconveniencies have arisen in such cities, boroughs, towns corporate, franchises, and liberties, as have only one justice of the peace of the *quorum* qualified to act within the same: Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this present act, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, which shall be made, done, or executed, by virtue of any act or acts of parliament made or to be made, by two or more justices of the peace qualified to act within such cities, boroughs, towns corporate, franchises, and liberties, though neither of the said justices are of the *quorum*, shall be valid and effectual in law, to all intents and purposes, as if one of the said justices had been of the *quorum*; any law, statute, or usage, to the contrary notwithstanding." Preamble. Two or more justices, tho' not of the quorum, impowered to carry certain acts into execution.

Stat. 7 *Geo.* 3. *c.* 39. [*A. D.* 1766. *intituled*,] "An act for the better regulation of the parish poor children, of the several parishes therein mentioned, within the bills of mortality." 7 Geo. 3. c. 39.

"Whereas it would greatly tend to the preservation of the lives of the infant parish poor of the several parishes hereafter mentioned, and be of publick utility, if the officers of such parishes were compelled by law to send such infant poor into the country, to be nursed, for a certain time; and proper persons appointed guardians in each parish, to inspect into the management and usage of such infants: And whereas the keeping registers of such infant poor, until they shall respectively arrive at the age of fourteen years, be placed out apprentice, or otherwise disposed of, would be a further means of preserving the lives of such infants: May it therefore please your majesty, that it may be enacted; and be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all and every child and children, who, on or before the first day of *July* one thousand seven hundred and sixty-seven, was or were born in, or received into, any workhouse or parish-house; or which shall thereafter be born in any workhouse or parish-house, or received by any select vestries, governors, directors, or managers, appointed for the management of parochial affairs, or by any church-wardens, overseers of the poor, or other officer or officers authorized by the several parishes following, or any of them, respectively; that is to say, the seventeen parishes without the walls of *London*; the twenty- Preamble. Children born in, or received into, any workhouse or parish-house, within the several parishes hereinmentioned,

twenty-three parishes in *Middlesex* and *Surrey*, being within the bills of mortality, and the liberty of the tower of *London*; and the ten parishes within the city and liberty of *Westminster*; shall be nursed and taken care of in manner as hereafter mentioned.

are to be nursed, and taken care of, as follows; viz.

Sect. 2. "And be it further enacted by the authority aforesaid, that all such children under the age of six years, who, upon the said first day of *July*, shall be under the care of vestries, governors, directors, or managers of the poor, or parish officers, shall, within fourteen days after the said time, be sent into the country, to a distance not less than three miles from any part of the cities of *London* and *Westminster*; there to be nursed and maintained at the charge of their respective parishes.

Such of them as are under six years of age, to be sent in the country, not less than three miles off;

Sect. 3. "And be it further enacted by the authority aforesaid, that all children who shall, from and after the said first day of *July*, be born in, or shall be received into, workhouses or parish-houses belonging to the said parishes, not being suckled by the mother, under the age of two years, shall, within fourteen days after their birth or reception, be sent into the country, to a distance not less than five miles from any part of the said cities of *London* or *Westminster*; and all children received into such workhouses or parish-houses above the age of two years, and under the age of six years, shall, within fourteen days after their reception, be sent into the country, to a distance not less than three miles from any part of the said cities of *London* or *Westminster*; there to be nursed and maintained in manner herein after directed.

those under two years, not suckled by the mother, not less than five miles off;

and those above two, and under six years of age, not less than three miles off.

Weekly rates to be paid for their nursing and maintaining, till apprenticed, or returned to the workhouse.

Sect. 4. "And be it further enacted by the authority aforesaid, that for the nursing and maintenance of each child so put out as aforesaid, the respective sums following shall be paid; that is to say, for the first six years of their age, a sum not less than two shillings and six pence; and from that time until such child shall be put out apprentice, or return to the workhouse, a sum not less than two shillings *per* week; and shall also, over and above the said charge of nursing and maintaining each child, pay to every nurse who shall have received any child of or under the age of nine months (the said child being alive, and having been treated properly, and to the satisfaction of the guardians hereafter mentioned, or the major part of them, assembled at any meeting appointed by this act) after having been under her care twelve months, a sum not less than ten shillings, as a reward for her pains and care taken in the nursing of such child: And the governors, directors, managers, or overseers of the poor, of the respective parishes from whence such children shall be so sent to nurse, shall find good, proper, and sufficient cloathing for each and every of them respectively; and shall defray the expences of conveyance, medicines, burials, and all other necessary expences incurred on account of said children; and shall keep, in a book or books to be provided for that purpose, separate, regular, and exact accounts of all expences incurred in relation thereto.

Conditional reward to nurse for their care.

Cloathing to be furnished, and all other incidental expences defrayed, by the parish,

and separate accounts to be kept thereof.

Sect. 5. "And, in order the more effectually to guard against all dangerous consequences which may arise to the said children from false parsimony, negligence, inadvertency, or the annual change of parish officers,

Be

Be it further enacted by the authority aforeſaid, that five noblemen or gentlemen, inhabitants of each pariſh, ſhall, within fourteen days after the ſaid firſt day of *July*, be appointed and choſen, under the title or denomination of *Guardians of the pariſh poor children*; two or more of which ſaid guardians ſhall be choſen out of the ſelect veſtry, or out of the governors, directors, or managers of the poor of each pariſh; and where there is no ſelect veſtry, governors, directors, or managers; then the ſaid five guardians to be choſen and appointed out of the noblemen and gentlemen inhabitants of each pariſh; and the election to be made upon *Tueſday*, or ſome other day in *Eaſter* week, by the inhabitants having right to aſſemble in veſtry: And in caſe there ſhall be no noblemen or gentlemen, or not be a ſufficient number of ſuch noblemen or gentlemen who will accept of the office of guardians; then the ſaid guardians, or ſo many as ſhall be wanting to make up the number of five, ſhall be choſen out of the principal and moſt reſpectable inhabitants: And if any of the parties ſo choſen ſhall refuſe to act, or ſhall afterwards reſign their guardianſhip, or ſhall die; that then, and in either of the ſaid caſes, a further choice ſhall be made in the ſame manner as before mentioned, within fourteen days after ſuch refuſal, reſignation, or death, of ſo many as ſhall be neceſſary to complete the number.

Five guardians of the pariſh poor children to be choſen.

Where any ſhall refuſe to act or ſhall reſign, or die, a further choice to be made.

Sect. 6. "And be it further enacted by the authority aforeſaid, that ſuch noblemen, gentlemen, or principal inhabitants, who ſhall, in conſequence of this act, be firſt choſen and appointed guardians of the pariſh poor children, ſhall continue and remain in their reſpective offices till the day in *Eaſter* week, in the year one thouſand ſeven hundred and ſeventy, of the inhabitants meeting for the choice of guardians as aforeſaid; and that the guardians then choſen, or at any time thereafter to be choſen, ſhall remain in their reſpective offices for the term of three years then next enſuing: And that all appointments of guardians in future, ſhall be once in three years only; except in caſes of death, reſignation, or refuſal as aforeſaid.

Firſt guardians to continue in office till the year 1770;

Future guardians to remain three years in office.

Sect. 7. "Provided always, that no churchwarden, or overſeer of the poor, ſhall be elected into the ſaid office of a guardian.

Churchwardens and overſeers diſqualified from being elected guardians.

Sect. 8. "And be it further enacted by the authority aforeſaid, that the ſaid guardians or any one of them, ſhall have free admittance to viſit and ſee the ſaid pariſh poor children, and inform themſelves fully concerning their ſtate and condition; and the ſaid guardians ſhall alſo have full liberty to examine, and have free acceſs to, all regiſters, books, and accounts, relating to the ſaid children: And in caſe of any neglect or improper conduct, whereby the life or health of a child may appear to the ſaid guardians, or to any one of them, to be in danger, to report the ſame to the ſelect veſtry, governors, directors, or managers, or to the churchwardens or overſeers of the poor: And if the ſaid veſtry, governors, directors, or managers, churchwardens, or overſeers, or ſome or one of them, do not take the moſt efficacious meaſures to remedy the evil complained

Power and duty of guardians.

Evils complained of by them, how to be remedied.

plained of; that then it ſhall be lawful to and for the ſaid guardians, or any of them, to inform one or more of his majeſty's juſtices of the peace, and give evidence of the facts; and the ſaid juſtice or juſtices of the peace is and are hereby impowered to give ſuch orders and directions therein, as he or they ſhall think moſt proper.

A meeting of the guardians to be ſummoned every ſix weeks; Two make a quorum. Power given them ſingly, or jointly, to call in the churchwardens or overſeers.

Sect. 9. "And be it further enacted, that the ſaid guardians ſhall be ſummoned, by the veſtry clerk, at leaſt once in ſix weeks, to meet at the veſtry-room, or, where there is no veſtry-room, in other convenient place; and two of the ſaid guardians ſhall make a *quorum*, either of them having the liberty of calling in one of the churchwardens or overſeers; and when only one of the ſaid guardians is preſent, he ſhall have the liberty of calling in two of the churchwardens or overſeers, who ſhall attend him accordingly; and when any number of the ſaid five guardians ſhall meet, they ſhall have the liberty of calling in two of the churchwardens or overſeeers, as the majority of them ſhall think proper.

Sect. 10. "And whereas in many pariſhes the ſaid ſelect veſtries, governors, directors, or managers, churchwardens, or overſeers of the poor, may find it inconvenient and difficult, through want of regular correſpondence with proper perſons in the country, to ſupply them with nurſes, and alſo to take the charge of inſpecting nurſeries in ſuch a manner as ſhall prove effectual to the preſervation of the lives of the ſaid children; Be it therefore enacted by the authority aforeſaid, that the ſaid ſelect veſtries, governors, directors, or managers, churchwardens, or overſeers of the poor, ſhall be at liberty to ſend their ſaid pariſh poor children, or any of them, being under the age of ſix years as aforeſaid, to the hoſpital for the maintenance and education of expoſed and deſerted young children; and it ſhall and may be lawful to and for the governors and guardians of the ſaid hoſpital for the time being, to receive ſuch children: And the ſaid ſelect veſtries, governors, directors, managers, churchwardens, or overſeers of the poor, are hereby impowered to agree with the ſaid governors and guardians for that purpoſe, upon ſuch terms, and in ſuch manner, as ſhall be adequate to the ſupport and maintenance of each child.

Liberty granted, of ſending pariſh poor children, under ſix years of age, to the Foundling hoſpital, upon ſuch terms as ſhall be agreed on:

The charge to be defrayed out of the poor rates;

and if not duly paid,

Sect. 11. "And be it enacted by the authority aforeſaid, that the terms ſo agreed upon, and the ſums agreed to be paid for the admiſſion, maintenance, and education, of ſuch pariſh poor children as ſhall be ſent to the ſaid hoſpital, ſhall be paid by the overſeer or overſeers of the poor for the time being, out of the poors rate of each pariſh reſpectively: And in caſe any ſum or ſums of money agreed between the ſaid ſelect veſtries, governors, directors, or managers, churchwardens, or overſeers, and the governors and guardians of the ſaid hoſpital, or any five of them in committee, ſhall not be paid, by ſuch overſeer or overſeers, to the perſon or perſons who ſhall be authorized by the ſaid governors and guardians to receive the ſame; it ſhall and may be lawful to and for any one or more of his majeſty's juſtices of the peace for the counties of *Middleſex* or *Surrey*, the city and liberty of *Weſtminſter*, or liberties of the *Tower Hamlets*, reſpectively, to ſummon the overſeer or overſeers who ſhall refuſe or neglect to make ſuch payment, and to order immediate payment to be made

any juſtice may ſummon the overſeers, and order im-

of ſo much as ſhall appear to ſuch juſtice or juſtices to be due, together with ſuch coſts and charges as may have been incurred by the ſaid governors and guardians in conſequence of ſuch refuſal or neglect: And if the overſeer or overſeers ſhall refuſe or neglect to obey the order of ſuch juſtice or juſtices, the ſum directed to be paid thereby ſhall be recovered by diſtreſs and ſale of the goods and chattels of ſuch overſeer or overſeers, together with the coſts attending ſuch diſtreſs and ſale, rendering the overplus (if any) to the owner.

Immediate payment, with the charges incurred; and, on refuſal, may levy the ſame by diſtreſs and ſale.

Sect. 12. "And be it further enacted by the authority aforeſaid, that at the time of the death, diſcharge, or apprenticeſhip, of any ſuch pariſh poor child, a certificate thereof ſhall be ſent, by the ſecretary of the ſaid governors and guardians, to the veſtry clerk, or overſeers of the poor, of ſuch pariſh to which the ſaid child did belong.

The death, diſcharge, or apprenticeſhip, of any child, to be certified to the veſtry clerk of the pariſh.

Sect. 13. "And be it further enacted by the authority aforeſaid, that the hoſpital account ſhall be kept with each pariſh diſtinct, in a proper book or books, with marginal columns, according to the ſchedule annexed, marked (*A*); and that ſuch book or books, or true copies thereof, ſhall be ſigned by the ſecretary of the hoſpital.

Hoſpital account to be kept with each pariſh diſtinct.

Sect. 14. "And whereas it often diſturbs the peace of domeſtic life, checks marriage, and diſcourages induſtry, to place out pariſh boys to the age of twenty-four years; therefore, in order to remedy the ſame, Be it enacted by the authority aforeſaid, that it ſhall and may be lawful to place or bind out boys as well as girls apprentices, by the reſpective pariſh officers for time being, and alſo by the governors and guardians of the hoſpital for the maintenance and education of expoſed and deſerted young children, for the term of ſeven years, or till they ſhall attain their reſpective ages of twenty-one years, and no longer.

Pariſh children, and foundlings, to be apprenticed for not more than ſeven years, or till twenty-one years of age.

Sect. 15. "And whereas the ſums of twenty ſhillings to forty ſhillings, now uſually given with a child placed out by the pariſhes, are by no means adequate to the procuring ſuch maſters and miſtreſſes as are in general fit and proper: And whereas there is a general neglect in the moral and religious inſtruction of apprentices; and ſome pecuniary encouragement may excite maſters and miſtreſſes to diſcharge their duty, in this reſpect, towards young perſons who are thus intruſted to their care; Be it therefore further enacted by the authority aforeſaid, that from and after the ſaid firſt day of *July* one thouſand ſeven hundred and ſixty-ſeven, no ſuch pariſh child ſhall be bound out an apprentice with a ſum leſs than four pounds two ſhillings as an apprentice fee; forty ſhillings whereof to be paid to the maſter or miſtreſs within ſeven weeks after executing the indentures, and the remaining forty-two ſhillings to be paid after ſuch apprentice ſhall have ſerved three years of his or her apprenticeſhip.

Apprentice fee not to be leſs than 4 l. 2 s. and to be paid at two payments.

Sect. 16. And whereas the act of the ſecond of his preſent majeſty, intituled, "An act for the keeping regular, uniform, and annual regiſters, of all pariſh poor infants under a certain age within the bills of mortality," requires no account of the children after the age of four years; Be it therefore further enacted by the authority aforeſaid, that the reſpective veſtries, governors, directors, managers, overſeers of the poor, or other

Act 2 Geo. 3.

Particular Regiſters to be provided by each pariſh, according as they come within the following deſcription.

officer or officers, of the ſeveral and reſpective pariſhes herein before mentioned, or ſome or one of them, ſhall, and they are hereby directed and required, on or before the ſaid firſt day of *July*, to provide, or cauſe to be provided, at the expence of their reſpective pariſhes wherein there is or ſhall be a work-houſe, hoſpital, or other houſe or place provided for the maintenance of the poor, a book of royal paper which ſhall be ruled with diſtinct columns, and the title of each column ſhall be wrote or printed in ſuch page agreeable to the ſchedule hereunto annexed, marked (B); and the book belonging to each reſpective pariſh, wherein there is not nor ſhall be any ſuch workhouſe, hoſpital-houſe, or place, ſhall in every page be ruled with diſtinct columns, and the title of each column ſhall be wrote or printed in ſuch page agreeable to the ſchedule hereunto annexed, marked (C); any thing in the ſaid act of the ſecond year of his preſent majeſty's reign, or any other act or acts of parliament, to the contrary thereof in any wiſe notwithſtanding."

Entry to be made at the foot of each regiſter.

Sect. 17. "And be it further enacted by the authority aforeſaid, that there ſhall be mentioned, at the foot of each regiſter, the groſs number of the children, remaining in the hands of mothers who have been relieved by the reſpective pariſhes during the courſe of the year, not entered in the regiſter; and the number of ſuch who are known to be remaining alive."

Form of the abſtract of the regiſter of the infant poor.

Sect. 18. "And be it further enacted by the authority aforeſaid, that the abſtract of the regiſter of the ſaid infant poor ſhall be according to the ſchedule hereunto annexed, marked (D)."

Manner of conducting their regiſters.

Sect. 19. "And be it further enacted by the authority aforeſaid, that the names of all the pariſh poor children who ſhall be alive, under the care of any governors, directors, managers, churchwardens, or overſeers of the poor, on the firſt day of *July* next enſuing, ſhall be entered in the ſaid regiſters, and ſhall be continued on and transferred from year to year, in the ſaid regiſter, until their death, or diſcharge to parents or friends, or until they are reſpectively placed out apprentice; and that the day of placing them out, and the time of their ſervitude, ſhall be entered in the ſaid regiſters as above mentioned.

Annual Liſt to be made out by each pariſh of the children apprenticed, and delivered to the company of pariſh clerks.

Sect. 20. "And be it further enacted by the authority aforeſaid, that a full liſt of all apprentices placed out by the reſpective pariſhes ſhall be made out by the veſtry clerks, or other proper officer, and delivered, in the month of *February* in every year, to the company of pariſh clerks; the ſame to be written on royal paper according to the ſchedule annexed, marked (E), to be bound up and depoſited by the company of pariſh clerks; and the ſaid company ſhall make out an abſtract thereof, diſtinguiſhing the number placed out from each pariſh, and how many of them were born in the work-houſe or pariſh-houſe; and ſhall cauſe the ſame to be printed; and ſhall ſend ſix fair copies of the ſaid abſtract to each pariſh reſpectively."

Abſtract thereof to be printed, and delivered to each pariſh.

Regiſters and liſts to commence and end annually at a certain time.

Sect. 21. "And be it further enacted by authority aforeſaid, that the firſt annual regiſter of the ſaid infant poor, and alſo the firſt annual liſts of apprentices, hereby intended and directed to be kept, ſhall commence on the ſaid firſt day of *July*, and ſhall end on the thirty-firſt day of *December* enſuing;

ſuing; and after that time the ſaid annual regiſter and liſts ſhall commence the firſt day of *January*, and end the thirty-firſt day of *December* following."

Sect. 22. "And be it further enacted by the authority aforeſaid, that all expences incident to and attending the nurſing, maintenance, education, placing out apprentice, or otherwiſe relating to the matters herein contained, the manner whereof is not herein particularly ordered and directed, ſhall be paid out of the monies ariſing from the poors rates of the reſpective pariſhes wherein ſuch expences ſhall be incurred." General expences not otherwiſe provided for, to be paid out of the Poors Rates.

Sect. 23. "And be it further enacted by the authority aforeſaid, that if any churchwarden, overſeer of the poor, veſtryman, clerk of the veſtry, maſter of the workhouſe, maſter or warden of ſuch company of pariſh clerks, or any clerk of ſuch company, or any other perſon or perſons, ſhall neglect his duty as directed in and by this act; ſuch churchwarden, overſeer of the poor, clerk of the veſtry, or maſter of the workhouſe, maſter or warden of ſuch company of pariſh clerks, or ſuch clerk of ſuch company, perſon or perſons, ſhall, for every offence, forfeit and pay to the informer the ſum of five pounds; to be recovered before any two or more of his majeſty's juſtices of the peace, and to be levied by diſtreſs and ſale of the goods and chattels of the offender, by virtue of a warrant under the hands and ſeals of the juſtices before whom the ſame ſhall be recovered, directed to any conſtable or other peace officer; and if there ſhall be any overplus of the ſaid forfeiture, the ſame ſhall be returned to the owner, after the charges of ſuch diſtreſs and ſale ſhall be deducted. Penalty on pariſh officers, and others, neglecting their duty.

Sect. 24. "And be it further enacted by the authority aforeſaid, that this act ſhall be deemed, adjudged, and taken to be, a public act; and be judicially taken notice of as ſuch, by all judges, juſtices, and other perſons whatſoever, without ſpecially pleading the ſame." Publick act.

SCHE-

SCHEDULE A.

Account of the Hoſpital for the Maintenance and Education of Expoſed and Deſerted young Children, with the Pariſh of (according to an Act of Parliament of the Seventh of His Majeſty King *George* the Third) of the Infant Pariſh Poor received by the ſaid Hoſpital.

When received into the Hoſpital.	Number in the Hoſpital Regiſter.	Male. M. Female. F.	Name If Legitimate or Parochial——P. If Illegitimate I. If Caſual—— C. If Foondling—F.	When born, or Age when received in the Work-houſe. If born—B.	When ſent to Nurſe.	Inſpectors Name and Pariſh.	Nurſe's Name and Pariſh.	Price of nurſing *per* Week.			Reward to the Nurſes for their Care.			If returned from nurſe to the Hoſpital. When.	If has had the Small Pox. When.	If died, when, and of what Diſtemper.	If apprenticed out, or put to Service, claimed, or diſcharged, when, and the Page in the Regiſter of Apprentices.
								L.	*s.*	*d.*	*L.*	*s.*	*d.*				

Apprentices.

SCHEDULE B.

SCHEDULE B.

ANNUAL REGISTER of the PARISH POOR CHILDREN, until they are Apprenticed out from the Day of to the 31ſt Day of *December* of the Pariſh of (where there is a Workhouſe or Pariſh Houſe) according to the Acts of Parliament of the Second and Seventh of His Majeſty King *George* the Third.

Name of the Child. If a Foundling mark —— } F. If a Baſtard —— B If a Caſualty —— C. the ſame Child is taken in a Second Time, mark the Second Entry of the Name——— 2 If a Third Time — 3 &c.	Age real or reputed at the Time when received. Years— Y. Months M. Days — D.	If born in the Workhouſe, when.	If not born in the Workhouſe, when admitted.	If Money received with any Child, what Sum (ſuch Sum not to be traosferred from Year to Year)	When died in the Work houſe.	When ſent from the Workhouſe, and by whom nurſed till ſent.	What Work Children paſt 6 Years of Age are employed in. If can read r. If can ſay his or her Prayers——— p. If both r. p.	When ſent to the Hoſpital for Expoſed and Deſerted young Children.	If diſcharged from the Pariſh, to whom delivered, and where living. If removed or paſſed, to what Place.	Nurſe's Name, to whom delivered to be nurſed. If a Wet Nurſe mark—— } W. If a Dry Nurſe D. If a Nurſe dies or is changed, write the Name of the new Nurſe under the former. If nurſed by the Mother, mark } M.	Place where the Nurſe lives, in what Place or near what Sign, ſo as to be found.	Price of nurſing each Week.	Reward to Nurſes.	If died at Nurſe, when.	If paſt 6 Years of Age and brought to the Workhouſe, mark ——— W. If diſcharged, mention to whom, and where living; if apprenticed, mention Folio of the Regiſter of Apprentices.
	Y. M. D.			£. s. d.									£. s. d.		

Apprentices.

SCHEDULE C.

SCHEDULE C.

ANNUAL REGISTER of the PARISH POOR CHILDREN, until Apprenticed out, from the Day of to the 31st Day of *December* of the Parish of (where there is not a Workehouse or Parish House) according to the Acts of Parliament of the Second and Seventh of His Majesty *George* the Third.

Name of the Child. If a Foundling, mark F. If a Bastard, B. If a Casualty, C. If the same Child is taken in a second time, mark the Second Entry of the Name 2. If a Third time, 3. &c.	Age, real or reputed. Years, Y Months, M. Days, D.	When received under the Care of the Parish. If born, B.	If Money be received with any Child, what sum (such Sum to be transferred from year to year.)	Name and Place of Abode of the Person by whom the Child is received on the Parish Account, till sent into the Country.	Where sent, if received past Six Years of Age, and in what Work employed. If can read, r. If can say his or her Prayers, p. If both, r. p.	When sent to the Hospital for Exposed and deserted young Children. If removed or passed, to what Place. If discharged from the Parish, to whom delivered, and where living.	Nurse's Name to whom delivered to be nursed. If a Wet Nurse, mark W. If a Dry Nurse, D. If the Nurse dies, or is changed, write the Name of the new Nurse under the former. If nursed by the Mother, mark M.	Place where the Nurse lives, in what Street, or near what Sign, so as to be found.	Price of Nursing each week.	Reward to Nurses for their Care.	If died at Nurse, when.	If discharged from the Parish, mention to whom, and where living. If apprenticed out, or placed out to Service, mention Folio in the Apprentice Register.
	Y. M. D.		£. s. d.							£. s. d.		

Apprentices.

SCHEDULE D.

SCHEDULE D.

An Abſtract of the Annual Regiſters of Pariſh Poor of the Bills of Mortality, from the Birth until apprenticed out.

The Names of Pariſhes, and where ſituated. *N. B.* Where there is a Work houſe, it is *	Number tranſferred from the preceding year.	Born in the Work-houſe or Pariſh-houſe.	Received into the Work-houſe or Pariſh-houſe.	Total born and received.	Of whom were under theſe Ages. Three Months.	Six Months.	Nine Months.	Twelve Months.	Eighteen Months.	Two Years.	Three Years.	Four Years.	Above Four Years	Of whom were Foundlings.	Illegitimate.	Caſualties.	Legitimate.	Number with whom Money was received.	Money. Sum received with Children. l.	s.	d.	Rewards paid to Nurſes as an encouragement to take all poſſible Care of the Children. l.	s.	d.

Nurſed by the Mother in the Work-houſe or Pariſh-houſe.	Died under the care of the Mother in the Work-houſe or pariſh-houſe	Nurſed by Nurſes in the Workhouſe or Pariſh-houſe.	Died under the care of Nurſes in the Workhouſe or Pariſh-houſe	Of whom died under theſe Ages, nurſed by Mothers and Nurſes. Three Months.	Six Months.	Nine Months.	Twelve Months.	Eighteen Months.	Two Years.	Three Years.	Four Years.	Above Four Years.	Remain alive in the Workhouſe or Pariſh-houſe.	Removed, paſſed, and diſcharged, to their Friends, Fathers, or Mothers; if delivered to the Mother, mark M.	*N. B.* As many as were nurſed within Five Miles of *London*, mark L.	Sent into the Country to be nurſed.	Of whom were under theſe Ages. Six Months.	Two Years.	Three Years.	Four Years.	Five Years.	Six Years.	Died in the Country under theſe Ages. Six Months.	Nine Months.	Twelve Months.	Eighteen Months.	Two Years.	Six Years	Total. Died in the Country.	Remain alive in the Country.	Apprenticed out, or put out to Service.	Born under the care of the pariſh, but not in the work-houſe or pariſh-houſe

SCHEDULE E.

REGISTER of the APPRENTICES placed out by the Pariſh of from the of to the 31ſt Day of *December* according to the Acts of Parliament of the Second and Seventh of His Majeſty King *George* the Third.

Name of the Apprentice.	When born or received. If born in the Workhouſe or Pariſh-houſe, B.	Age when received, in Years, Months, and Days.			When placed out Apprentice.	Name of the Perſon to whom placed out.	What Trade or Buſineſs.	Where living, Street, ſign, or other Diſtinction.	Age when placed out, in Years, and Months.		For what Time placed out	Apprentice Fee paid down.	When the additional Fee is paid down.
		Y.	M.	D.					Y.	M.			

For other matters, ſee Larceny, Servant, Stamps. *And for the ſettlements of Apprentices, ſee* Poor.

Approver.

AN *approver*, (in *Latin*, *probator*,) is one who being indicted of treaſon or felony, for which he is in priſon, confeſſes the indictment; and being ſworn to reveal all the treaſons and felonies he knows, enters before a coroner his appeal againſt all his partners in the crime within the realm. *Hal. P. C.* 192. 3 *Inſt.* 129. *S. P. C.* 142.

All perſons may be approvers except peers of the realm, perſons attainted of treaſon or felony, or outlawed, infants, women, perſons *non compos*, or in holy orders. 3 *Inſt.* 129. *Hal. P. C.* 192.

The court is not bound of right to admit any perſon whatſoever to be an approver, nor will any perſon be admitted, unleſs he be actually indicted of treaſon or felony, and confeſſes the indictment, neither ſhall a perſon indicted of felony continue to be an approver after an appeal exhibited againſt him for the ſame felony; neither ſhall the appellee of an approver be himſelf an approver; for it would falſify the appeal of the firſt approver, in ſuppoſing that he had omitted ſome of his partners, but alſo becauſe it would cauſe an infinite delay; for the appellee of ſuch an approver might as well become an approver of others, and ſo on. 3 *Inſt.* 139. *S. P. C.* 144. 2 *Hawk. P. C.* 205.

A man can only approve others of the very ſame crime with that for which he is indicted, and therefore no man can approve another with having been an acceſſary to himſelf, becauſe it is an offence of which it is not poſſible that he himſelf can be guilty; but in as much as an approver is ſworn to reveal all the treaſons and felonies he knows, if he accuſe perſons of crimes different from his own, ſuch accuſation ſeems a reaſonable ground to carry on a proſecution againſt them for ſuch crimes, though it be not of itſelf ſufficient to put them on their trials. 2 *Inſt.* 629. *Fitz. Coron.* 127. 2 *Hawk. P. C.* 206.

If it appear either by the confeſſion of the approver, or by the return of the ſheriff, or the teſtimony of perſons of credit, that there are no ſuch perſons, as ſome of thoſe appealed, *in rerum natura*, or in the realm, or in the county whereof they are named in the appeal, he ſhall be hanged, unleſs the court in mercy ſpare him. 2 *Hawk. P. C* 206.

The juſtices of the *King's Bench*, and juſtices of gaol-delivery, and juſtices in *Eyre*, may admit a man to be an approver, becauſe ſuch juſtices may aſſign a coroner to take the appeal; but juſtices of the peace cannot admit a man to be an approver, becauſe they cannot aſſign a coroner. 3 *Inſt.* 130. *H. P. C.* 194.

As ſoon as a perſon has confeſſed the indictment, with an intent to become an approver, he puts it in the diſcretion of the juſtices, either to give judgment and award execution againſt him, or to reſpite him till he hath convicted his partners; if the juſtices think fit to admit him to be an approver, they will aſſign a coroner to receive his appeal, and will take his oath to diſcover all the treaſons and felonies he knows, and will aſſign him

a certain number of days to make his appeal in, during which he ſhall be at liberty, and ſhall have from the king a penny a day; alſo he muſt make his appeal before the coroner on each day during the time limited, and muſt at laſt repeat it *verbatim* in court; and if the coroner record his failure of making his appeal on any of the days, or the leaſt variation in his repeating it in court, he ſhall have judgment of death. 3 *Inſt.* 129. *H. P. C.* 144. 2 *Inſt.* 629. 2 *Hawk. P. C.* 207.

As it is in the diſcretion of the court whether they will ſuffer one to be an approver, this method of late hath been ſeldom practiſed: and in many caſes we have what ſeems to amount to the ſame, by ſtatute; whereby pardon is aſſured to offenders, on diſcovering and convicting their accomplices. 1 *Burn tit. Approver.*

Arraignment.

A PRISONER is ſaid to be *arraigned*, when he is indicted and brought forth to his trial. *Arraigned* within the verge upon murder. *Staundf. Pl. Cor. fol.* 150. The manner of this *arraignment* may be read in Sir *Thomas Smith de Rep. lib.* 2. *cap.* 25. The learned *Spelman* is of opinion it ſhould be written *arrame* from *arramare*, and that from the old French *arramir*, i. e. *jurare*, *promittere*, *ſolemniter profiteri*. But this muſt be a miſtake: for in the Regiſter we find no ſuch word as *arramare*; but in all the writs of aſſize 'tis *arrainavit:* and ſo it is in the year-books, and in *Fitzh. Nat. Brev.* The true derivation is from the French *arraiſoner*, i. e. *ad rationem ponere*, *viz.* to call a man to anſwer in form of law; and this comes from the barbarous Lat. *adrationare*, i. e. *placitare:* ſo that when a criminal is *arraigned*, 'tis *ponere eum ad rationem.* Cowell, edit. 1727.

When an offender comes into court, or is brought in by proceſs, ſometimes of *capias*, and ſometimes of *habeas corpus* directed to the gaoler of another priſon; the firſt thing that follows thereupon is his arraignment. 2 *Hal. H.* 216. Now arraignment is nothing elſe but the calling the offender to the bar of the court, to anſwer the matter charged upon him: and the word in *Latin* is no other than *ad rationem ponere*, and in old French *ad reſon*, or abbreviated *a reſn*; for as the ancient word *diſrain* or *derayn* imports in Latin *diſrationare*, to diſprove, or evince the contrary of any thing that is or may be affirmed, ſo *arraigne* is *ad rationem ponere*, to call to account or anſwer. 2 *Hale's Hiſt.* 216. The priſoner on his arraignment, tho' under an indictment of the higheſt crime, muſt be brought to the bar without irons and all manner of ſhackles or bonds, unleſs there be a danger of eſcape, and then he may be brought with irons. 2 *H. H.* 219. And there is no neceſſity that a priſoner at the time of his arraignment, hold up his hand at the bar, or be commanded ſo to do; for this is only a cere-

mony for making known the perſon of the offender to the court; and if he anſwers that he is the ſame perſon, it is all one. 2 *Hawk.* 308.

If in an action of ſlander for calling one thief, the defendant juſtifies that he ſtole goods, and iſſue is thereon taken; if it be found for the defendant in *B. R.* and for felony in the ſame county where the court ſits, or before juſtices of aſſize, *&c.* he ſhall be forthwith *arraigned* upon this verdict of twelve men, as on an indictment. 2 *Ha. H. P. C.* 151.

The pleas upon arraignment are either the general iſſue, Not guilty, plea in abatement, or in bar, and the priſoner may demur to the indictment; alſo he may confeſs the fact, but then the court has nothing more to do than to proceed to judgment againſt him. If he ſtands mute, and doth not put himſelf upon trial, he ſhall ſuffer the penance of *pain fort & dure* in caſes of felony, *&c.* 3 *Inſt.* 217.

Arreſt.

ARREST (*arreſtum*, from the *French* word *arreſter*, to *ſtop* or *ſtay*) ſignifies a reſtraint of man's perſon, depriving him of his own will and liberty, and binding him to become obedient to the will of the law: and it may be called the beginning of impriſonment. *Cowell.*

By whom offenders may be arreſted or apprehended.

It ſeems clear, that all perſons whatſoever who are preſent when a felony is committed, or a dangerous wound given, are bound to apprehend the offender, on pain of being fined and impriſoned for their neglect, unleſs they were under age at the time. 2 *Hawk.* 74.

And for this cauſe, by the common law, if any homicide be committed, or dangerous wound given, whether with or without malice, or even by miſadventure or ſelf-defence, in any town or in the lanes or fields thereof, in the day-time, and the offender eſcape, the town ſhall be amerced, and if out of a town, the hundred ſhall be amerced. 2 *Hawk.* 74.

And ſince the ſtatute of *Wincheſter*, *cap.* 5. which ordains that walled towns ſhall be kept ſhut from ſun-ſetting to ſun-riſing, if the fact happen in any ſuch town by night or by day, and the offenders eſcape, the town ſhall be amerced. 2 *Hawk.* 74.

And as all private perſons are bound to apprehend all thoſe who ſhall be guilty of any of the crimes above-mentioned in their view, ſo alſo are they with the utmoſt diligence to purſue, and endeavour to take all thoſe who ſhall be guilty thereof out of their view, upon a hue and cry levied againſt them. 2 *Hawk.* 75.

Hue and cry is the purſuit of an offender from town to town till he be taken, which all who are preſent when a felony is committed, or a dangerous wound given, are by the common law, as well as by ſtatute, bound to raiſe againſt the offenders who eſcape, on pain of fine and impriſonment: alſo it ſeems certain, that a man may lawfully raiſe it againſt one who

who ſets upon him in the highway to rob him. Alſo it is enacted by the ſtatute of *Wincheſter*, *cap.* 4. That hue and cry ſhall be levied upon any ſtranger who ſhall not obey the arreſt of the watch in the night-time; and 21 *E.* 1. which was made againſt treſpaſſers in foreſts, chaſes, parks, and warrens, ſeems to allow the levying thereof upon any ſuch offenders. But if a man take upon him to levy a hue and cry without ſufficient cauſe, he ſhall be puniſhed as a diſturber of the peace. 2 *Hawk.* 75.

In order rightly to raiſe a hue and cry, you ought to go to the conſtable of the next town, and declare the fact, and deſcribe the offender, and the way he is gone; whereupon the conſtable ought immediately, whether it be night or day, to raiſe his own town, and make a ſearch for the offender; and upon the not finding him, to ſend the like notice, with the utmoſt expedition, by horſemen as well as footmen, to the conſtables of all the neighbouring towns, who ought in like manner to ſearch for the offender, and alſo to give notice to their neighbouring conſtables, and they to the next, till the offender be found. 2 *Hawk.* 75.

Alſo every private perſon is bound to aſſiſt an officer demanding his help for the taking of a felon, or the ſuppreſſing an affray, or apprehending the affrayers, *&c.* 2 *Hawk.* 75.

For what cauſes of ſuſpicion, perſons may be arreſted.

By the ſtatute 34 *Ed.* 3. *c.* 1. [*A. D.* 1360.] Juſtices of the peace are empowered "to take and arreſt all thoſe that they may find by indictment, or by ſuſpicion, and to put them in priſon; and to take of all them that be not of good fame, where they ſhall be found, ſufficient ſurety and mainprize of their good behaviour towards the king and his people."——

The cauſes of ſuſpicion, which are generally agreed to juſtify the arreſt of an innocent perſon for felony, are, 1ſt, The common fame of the country: but it ſeems, that it ought to appear upon evidence, upon an action brought for ſuch an arreſt, that ſuch fame had ſome probable ground. 2dly, The living a vagrant, idle, and diſorderly life, without having any viſible means to ſupport it. 3dly, The being in company with one known to be an offender, at the time of the offence; or generally at other times keeping company with perſons of ſcandalous reputations. 4thly, Being found in ſuch circumſtances as induce a ſtrong preſumption of guilt, as coming out of a houſe wherein murder has been committed, with a bloody knife in one's hand; or being found in poſſeſſion of any part of goods ſtolen, without being able to give a probable account of coming honeſtly by them. 5thly, The behaving one's ſelf in ſuch manner as betrays a conſciouſneſs of guilt; as where a man being charged with a treaſon or felony, ſays nothing to it, but ſeems tacitly by his ſilence to own himſelf guilty, or where a man accuſed of any ſuch crime, upon hearing that a warrant is taken out againſt him, doth abſcond. 6thly, the being purſued by an hue and cry. 2 *Haw. P. C.* 76.

By whom the perſon muſt be ſuſpected.

It ſeems to be agreed, that the law hath ſo tender a regard to the liberty and reputation of every perſon, that no cauſes of ſuſpicion whatſoever, let the number and probability of them be never ſo great, will juſtify the arreſt of an innocent man, by one who is not himſelf induced by them to ſuſpect him to be guilty, whether he make ſuch arreſt of his own head, or in obedience to

th

the commands of a private perſon, or even of a conſtable. 2 *Hawk. P. C.* 76.

It is holden in ſome books, that none of the above-mentioned cauſes will in any caſe juſtify the arreſting a man for the ſuſpicion of a crime, where in truth no ſuch crime hath been committed either by him or any other perſon whatſoever. But howſoever this rule may in general be true, it ſeems very hardly maintainable in the caſe of the arreſt of an innocent perſon upon a hue and cry levied againſt him, in ſuch a place where his character is unknown, and with ſuch other circumſtances, that the people of the country have no reaſon to preſume it groundleſs; for in ſuch caſes, it would be a great inconvenience to diſcourage perſons from following a hue and cry, with that vigour and diligence, which the law expects, and the publick good requires, by making them liable to an action if it ſhould in the event prove to have been levied without ſufficient cauſe, which they cannot take time to examine without delaying their purſuit: and ſince the perſon injured by ſuch an ill-grounded hue and cry, has a good action againſt him that raiſed it, there ſeems to be no neceſſity, that he ſhould alſo have a remedy againſt another. And this opinion ſeems to be the more plauſible, for that among the books cited to maintain the contrary, that which alone doth directly affirm it, ſeems to go upon an argument manifeſtly inconcluſive; for it ſays, that a hue and cry is not a ſufficient authority to arreſt a man unleſs a felony be done, becauſe the words of the ſtatute of *Weſtminſter* 1. *cap.* 9. are, That all men ſhall be ready upon hue and cry to arreſt felons; but where no felony is done, there can be no felon, *&c.* to which it may be replied, that this argument, if it prove any thing, proves that none but felons can be arreſted on a hue and cry, which ſeems to be manifeſtly falſe; for it is agreed by all the books, that if a felony be actually committed, an innocent perſon on whom an hue and cry for it is levied, may lawfully be arreſted: alſo there ſeems to be no doubt, but that he who barely attempts to rob a man, or who dangerouſly wounds him, may ſafely be purſued and taken by a hue and cry, and yet there is no pretence to call ſuch a perſon a felon. 2 *Hawk.* 76, 77.

Whether any ſuch cauſe of ſuſpicion will juſtify an arreſt, where no treaſon or felony hath been committed, or dangerous wound given.

And if it be granted lawful to arreſt a man on a hue and cry where no felony hath been committed; from the like grounds it ſeems alſo to follow, that it is lawful to arreſt a man on the warrant of a juſtice of peace, where no felony hath been committed. 2 *Hawk.* 77.

It ſeems to be certain, that whoever would juſtify the arreſt of an innocent perſon by reaſon of ſuch ſuſpicion, muſt not only ſhew that he ſuſpected the party himſelf, but muſt alſo ſet forth the cauſe which induced him to have ſuch a ſuſpicion, that it may appear to the court to have been a ſufficient ground for his proceeding: Alſo it ſeems certain, that regularly he ought expreſly to ſhew, that the very ſame crime for which he made the arreſt, was actually committed. But if a man has ſeveral cauſes of ſuch ſuſpicion, he is not bound to inſiſt upon ſome one of them only, but may alledge them all, for that the replication *de ſon tort demeſne*, anſwers the whole. And where a man arreſts another, who is actually guilty of the crime for which he is arreſted, it ſeems, that he needs not in juſtifying,

In what manner an arreſt for ſuch ſuſpicion is to be juſtified in pleading.

ing,

ing it, ſet forth any ſpecial cauſe of his ſuſpicion, but may ſay in general, that the party feloniouſly did ſuch a fact, for which he arreſted him, *&c.* 2 Hawk. P. C. 77.

Arreſting of offenders by private perſons of their own authority, permitted by law for the prevention of treaſon or felony, or in reſpect of inferior offences.

It ſeems, that any one may lawfully lay hold on another, whom he ſhall ſee on the point of committing a treaſon or felony, or doing any act which would manifeſtly endanger the life of another, and may detain him ſo long, till it may reaſonably be preſumed, that he hath changed his purpoſe; and upon this ground it ſeemeth to be the better opinion, that not only a conſtable, but any private perſon who ſhall ſee another expoſe an infant in the ſtreet, and refuſe to take it away, may lawfully apprehend and detain him till he ſhall conſent to take care of it. 2 *Hawk.* 77.

Inferior offences.

It ſeems clear, that regularly no private perſon can of his own authority arreſt another for a bare breach of the peace after it is over; for if an officer cannot juſtify ſuch an arreſt, without a warrant from a magiſtrate, ſurely *à fortiori* a private perſon cannot: yet it is holden by ſome, that any private perſon may lawfully arreſt a ſuſpicious night-walker, and detain him till he make it appear, that he is a perſon of good reputation. Alſo it hath been adjudged, that any one may lawfully apprehend a common notorious cheat, going about the country with falſe dice, and being actually caught playing with them, in order to have him before a juſtice of peace; for the publick good requires the utmoſt diſcouragement of all ſuch perſons, and the reſtraining of private perſons from arreſting them without a warrant from a magiſtrate would often give them an opportunity of eſcaping: and from the reaſon of this caſe it ſeems to follow, that the arreſt of any other offenders by private perſons, for offences in like manner ſcandalous and prejudicial to the publick, may be juſtified. 2 *Hawk.* 77, 78.

Of arreſting offenders by conſtables by their own authority.

It ſeems difficult to find any caſe, wherein a conſtable is impowered to arreſt a man for a felony committed or attempted, in which a private perſon might not as well be juſtified in doing it: but the chief difference between the power and duty of a conſtable and a private perſon in reſpect of ſuch arreſts, ſeems to be this, that the former has the greater authority to demand the aſſiſtance of others, and is liable to the ſeverer fine for any neglect of this kind, and has no ſure way to diſcharge himſelf of the arreſt of any perſon apprehended by him for felony without bringing him before a juſtice of peace, in order to be examined; whereas a private perſon having made ſuch an arreſt, needs only to deliver his priſoner into the hands of the conſtable. 2 *Hawk. P. C.* 81.

But it is ſaid, that a conſtable hath authority not only to arreſt thoſe whom he ſhall ſee actually engaged in an affray, but alſo to detain them till they find ſureties of the peace; whereas a private perſon ſeems to have no other power in a bare affray, not attended with the danger of life, but only to ſtay the affrayers till the heat be over, and then deliver them to the conſtable, and alſo to ſtop thoſe whom he ſhall ſee coming to join either party: but it is difficult to find any inſtance wherein a conſtable hath any greater power than a private perſon over a breach of the peace out of

his

his view; and it ſeems clear, that he cannot juſtify an arreſt for any ſuch offence, without a warrant from a juſtice of the peace, *&c.* 2 *Hawk. P. C.* 81.

Of arreſting offenders by conſtables by warrant from a juſtice of peace.

It ſeems clear, that ſuch an arreſt unlawfully made by a conſtable without a warrant, cannot be made good by a warrant taken out afterwards; alſo it hath been holden, that if a conſtable, after he hath arreſted the party by force of any ſuch warrant, ſuffer him to go at large, upon his promiſe to come again at ſuch a time and find ſureties, he cannot afterwards arreſt him by force of the ſame warrant. However, if the party return and put himſelf again under cuſtody of the conſtable, it ſeems that it may be probably argued, that the conſtable may lawfully detain him and bring him before the juſtice in purſuance of the warrant; for if a perſon taken by virtue of a civil proceſs, and voluntarily ſuffered by the ſheriff to eſcape, may afterwards upon his return to the priſon be kept by the ſheriff by virtue of the ſame proceſs, unleſs the plaintiff rather chuſe to take advantage of the eſcape againſt the ſheriff; ſurely *a fortiori* upon an arreſt for a crime, in which caſe it is to be preſumed, that the publick good requires that the party be brought to juſtice, it ſhall likewiſe be lawful to detain a perſon returning to the officer after ſuch an eſcape: however as the law ſeems not to be ſettled in relation to ſuch an eſcape, after an arreſt by virtue of civil proceſs; ſo neither doth it ſeem to be clear in relation to an eſcape after an arreſt by force of ſuch a warrant from a juſtice of peace.

But it ſeems clear, that a conſtable cannot juſtify any arreſt by force of a warrant from a juſtice of peace, which expreſly appears on the face of it, to be for an offence whereof a juſtice of peace hath no juriſdiction, or to bring the party before him at a place out of the county for which he is a juſtice. But it ſeems, that he both may and ought to execute a general warrant to bring a perſon before a juſtice of peace, to anſwer ſuch matters as ſhall be objected againſt him on the part of the king; for that the officer ought to preſume, that the juſtice hath a juriſdiction of the matter, which he takes conuſance of, unleſs the contrary appear; and it may often endanger the eſcape of the party to make known the crimes he is accuſed of. But it ſeems to be very queſtionable, whether a conſtable can juſtify the execution of a general warrant to ſearch for felons or ſtolen goods, becauſe ſuch warrant ſeems to be illegal on the very face of it; for that it would be extremely hard, to leave it to the diſcretion of a common officer to arreſt what perſons, and ſearch what houſes he thinks fit: and if a juſtice cannot legally grant a blank warrant for the arreſt of a ſingle perſon, leaving it to the party to fill it up, ſurely he cannot grant ſuch a general warrant, which might have the effect of a hundred blank warrants. 2 *Hawk. P. C.* 81, 82

Yet perhaps it is the better opinion at this day, that any conſtable, or even private perſon, to whom a warrant ſhall be directed from a juſtice of peace to arreſt a particular perſon for felony, or any other miſdemeanour within his juriſdiction, may lawfully execute it, whether the perſon mentioned in it be in truth guilty or innocent, and whether he were before indicted of the ſame offence or not; for however the juſtice himſelf may be puniſhable for granting ſuch a warrant without ſufficient grounds, it

is reaſonable that he alone be anſwerable for it, and not the officer, who is not to examine or diſpute the reaſonableneſs of his proceeding; and therefore it ſeems that the old books which ſay generally, that no one can juſtify an arreſt upon a ſuſpicion of felony, unleſs he himſelf ſuſpect the party, and unleſs the felony were in truth committed, ought to be intended only of arreſts made by a perſon of his own head, or in obedience to the command of a conſtable, or other ſuch like miniſterial officer, and not of ſuch as are made in purſuance of the warrant of a juſtice of peace; for in as much as it ſeems to be the conſtant and allowed practice of late, to make out warrants on the ſuſpicion of felony before any indictment hath been found againſt the perſon ſuſpected; and the ſame ſeems to be countenanced by 1 & 2 *Phil. & Ma.* 13. and 2 & 3 *Phil. & Ma. c.* 10. which direct in what manner perſons brought before juſtices of peace upon ſuſpicion, ſhall be examined in order to their being committed or bailed; and ſince the ancient opinion, that a juſtice of peace cannot make out a warrant againſt a man for felony, who has not been indicted before, hath been contradicted by conſtant experience; and ſince in the very ſame report in which this rule is laid down, that a juſtice of peace cannot make a warrant againſt a perſon who has not been indicted; it ſeems nevertheleſs to be agreed, that ſuch a warrant is a good juſtification for the officer; and ſince none of the books cited by Sir *Edward Coke* to maintain the contrary opinion, mention the caſe of an arreſt by force of a warrant from a juſtice of peace, but generally relate only to arreſts by private perſons of their own authority, or by the command of a conſtable; and ſince too the caſe, which is fulleſt to the purpoſe, wherein it is reſolved, that an arreſt of a perſon by the command of a biſhop for ſaying, that he was not bound to pay tithes, could not be juſtified by force of the Statute, which authorized biſhops to arreſt perſons for hereſy, for which this reaſon is given among others, that the biſhop himſelf could not juſtify ſuch an arreſt, and conſequently could not authorize another to make it; it may be anſwered, that the reſolution in that caſe doth not wholly depend upon this reaſon, but rather perhaps upon theſe; that the biſhop's command was by parol only, and not by writing, and that the ſtatute gave him no juridiction over points not heretical; and that the power of impriſoning perſons for meer matters of opinion ought to be ſtrictly conſtrued: and farther, ſince the party injured by an arreſt on a juſtice's warrant, hath a good action againſt the juſtice who granted it, if he did it maliciouſly of his own head, in order to oppreſs or defame the party, without any probable ground of ſuſpicion; and therefore there is no neceſſity of giving a farther remedy againſt the officer who obeys the warrant: and farther, ſince it is in general a great diſcouragement to officers, to ſubject them to actions for endeavouring to ſerve the publick, by paying obedience to the precepts of thoſe whoſe officers they are; it would certainly be very difficult at this day, to maintain an action againſt them for any arreſt of this kind, unleſs the warrant appear to be for a matter whereof the juſtice has no juriſdiction. It ſeems indeed to be holden in *Broucher*'s caſe in *Croke*'s ſecond report, that where an officer arreſts a man by force of a warrant from a magiſtrate, *pro certis cauſis*, without ſhewing any cauſe in particular, he cannot juſtify himſelf in an action brought againſt

him for ſuch arreſt, without ſetting forth the particular cauſe in his plea; and yet in this very report it ſeems to be allowed, that ſuch a general warrant is good; and if ſo, it ſeems ſtrange, that the officer ſhould not be juſtified by ſetting forth the truth of his caſe; ſince if there were no good cauſe to juſtify the granting of the warrant, the magiſtrate ought to anſwer for it, not the officer. 2 *Hawk. P. C.* 82, 83.

Of arreſting offenders by command of juſtices of peace.

As to ſuch arreſts by parol, it ſeems, that any ſuch juſtice may lawfully by word of mouth, authorize any one to arreſt another, who ſhall be guilty of any actual breach of the peace in his preſence, or ſhall be engaged in a riot in his abſence. 2 *Hawk. P. C.* 83.

By warrant. &c.

As to the offences for which a warrant may be granted by juſtices of peace, there ſeems to be no doubt, but that it may be lawfully granted by any juſtice of peace for treaſon, felony or *præmunire*, or any other offence againſt the peace; alſo it ſeems clear, that wherever a ſtatute gives to any one juſtice of peace a juriſdiction over any offence, or a power to require any perſon to do a certain thing ordained by ſuch ſtatute, it impliedly gives power to every ſuch juſtice to make out a warrant to bring before him any perſon accuſed of ſuch offence, or compellable to do the thing ordained by ſuch ſtatute; for it cannot but be intended, that a ſtatute giving a perſon juriſdiction over an offence, doth mean alſo to give him the power incident to all courts, of compelling the party to come before him. And it would be to little purpoſe to authorize a man to require another to do a thing, if it were to be underſtood that the perſon authorized had no power to compel the party to come before him. 2 *Hawk. P. C.* 84.

But it ſeems, that anciently no one juſtice of peace could legally make out a warrant for an offence againſt a penal ſtatute, or other miſdemeanour, cognizable only by a ſeſſions of two or more juſtices; for that one ſingle juſtice of peace hath no juriſdiction of ſuch offence, and regularly thoſe only who have a juriſdiction over a cauſe can award proceſs concerning it. Yet the long, conſtant, univerſal and uncontrouled practice of juſtices of peace ſeems to have altered the law in this particular, and to have given them an authority in relation to ſuch arreſts, not now to be diſputed. 2 *Hawk. P. C.* 84.

And as to the evidence on which ſuch a warrant is to be granted, it ſeems probable, that the practice of juſtices of peace in relation to this matter alſo, is now become a law, and that any juſtice of peace may juſtify the granting of a warrant for the arreſt of any perſon upon ſtrong grounds of ſuſpicion for a felony or other miſdemeanour, before any indictment hath been found againſt him. Yet in as much as juſtices of peace claim this power rather by connivance, than any expreſs warrant of law, and ſince the undue execution of it may prove ſo highly prejudicial to the reputation as well as to the liberty of the party, a juſtice of peace cannot well be too tender in his proceeding of this kind, and ſeems to be puniſhable not only at the ſuit of the king, but alſo of the party grieved; if he grant any ſuch warrant groundleſsly and maliciouſly, without ſuch a probable cauſe, as might induce a candid and impartial man to ſuſpect the party to be guilty. 5 *Hawk. P. C.* 84, 85.

And ſince both *Coke* and *Hale* ſeem to diſapprove of ſuch warrants

granted upon ſuſpicion, and the old books ſeem generally to diſallow all arreſts for the ſuſpicion of felony made by any other perſon whatſoever, except the very perſon who hath the ſuſpicion; it is certainly a ſafe way of proceeding for him who hath the ſuſpicion to make the arreſt in his proper perſon, and get a warrant from a juſtice of peace to the conſtable to keep the peace. 2 *Hawk. P. C.* 85.

And perhaps there may be this difference between the warrant of a juſtice of peace, for ſuch cauſes which he has not authority to hear and determine as judge without the concurrence of others, and ſuch warrant for an offence which he may ſo determine without the concurrence of any other: That in the former caſe, in as much as he rather proceeds miniſterially than judicially, if he act corruptly, he is liable to an action at the ſuit of the party, as well as to an information at the ſuit of the king: but in the latter caſe he is puniſhable only at the ſuit of the king for that regularly no man is liable to an action for what he doth as judge. 2 *Hawk. P. C.* 85.

In what form ſuch warrant is to be made.

1. It ought to be under the hand and ſeal of the juſtice who makes it out. 2. It ought to ſet forth the year and day wherein it is made, that in an action brought upon an arreſt made by virtue of it, it may appear to have been prior to ſuch arreſt. 3. It is ſafe, but perhaps not neceſſary, in the body of the warrant to ſhew the place where it was made; yet it ſeems neceſſary to ſet forth the county in the margin, at leaſt if it be not ſet forth in the body. 4. It may be made either in the name of the king, or of the juſtice himſelf. 5. If it be for the peace or good behaviour, it is adviſeable to ſet forth the ſpecial cauſe upon which it is granted; but if it be for treaſon or felony, or other offence of an enormous nature, it is ſaid, that it is not neceſſary to ſet it forth; and it ſeems to be rather diſcretionary, than neceſſary to ſet it forth in any caſe. 6. Such a warrant may be either general, to bring the party before any juſtice of peace of the county, or ſpecial, to bring him before the juſtice only who granted it. 7. It may be directed to the ſheriff, bailiff, conſtable, or to any indifferent perſon by name, who is no officer; for that the juſtice may authorize any one to be his officer, whom he pleaſes to make ſuch, yet it is moſt adviſeable to direct it to the conſtable of the precinct wherein it is to be executed; for that no other conſtable, and *a fortiori* no private perſon, is compellable to ſerve it. 2 *Hawk. P. C.* 85.

In what manner ſuch warrant is to be executed.

As to this point, the following rules are laid down; 1ſt, That a bailiff or a conſtable, if they be ſworn and commonly known to be officers, and act within their own precincts, need not ſhew their warrant to the party, notwithſtanding he demand the ſight of it, but that theſe and all other perſons whatſoever making an arreſt, ought to acquaint the party with the ſubſtance of their warrants, and that all private perſons, to whom ſuch warrants ſhall be directed, and even officers, if they be not ſworn and commonly known; and even theſe, if they act out of their own precincts, muſt ſhew their warrants, if demanded. 2dly, That the ſheriff having ſuch warrant directed to him, may authorize others to execute it; but that every other perſon to whom it is directed, muſt perſonally execute it; yet it ſeems, that any one may lawfully aſſiſt him. 3dly, That if a warrant be generally directed to all conſtables, no one can execute it out of his own precinct

precinct; but if it be directed to a particular conſtable by name, he may execute it any where within the juriſdiction of the juſtice. 2 *Hawk. P. C.* 85, 86.

Of breaking open doors in order to make an arreſt.

As to breaking open doors in order to make an arreſt, it muſt be obſerved, that the law doth never allow of ſuch extremities but in caſes of neceſſity; and therefore, that no one can juſtify the breaking open another's doors to make an arreſt, unleſs he firſt ſignify to thoſe in the houſe the cauſe of his coming, and requeſt them to give him admittance. But where a perſon authorized to arreſt another who is ſheltered in a houſe, is denied quietly to enter into it, in order to take him, it ſeems generally to be agreed, that he may juſtify breaking open the doors in the following inſtances: 1ſt, Upon a *capias* grounded upon an indictment for any crime whatſoever, or upon a *capias* from the *King's Bench* or *Chancery*, to compel a man to find ſureties for the peace or good behaviour, or even upon a warrant from a juſtice of peace for ſuch purpoſe. 2dly, Upon a *capias utlagatum*, or *capias pro fine*, in any action whatſoever. 3dly, Upon the warrant of a juſtice of peace, for the levying of a forfeiture, in execution of a judgment, or conviction for it grounded on any ſtatute which gives the whole, or but part of ſuch forfeiture to the King, and authorizes the juſtices of the peace to give ſuch judgment or conviction for it. 4thly, Where a forcible entry or detainer is either found by inquiſition before juſtices of peace, or appears upon their view. 5thly, Where one known to have committed a treaſon or felony, or to have given another a dangerous wound, is purſued either with or without a warrant, by a conſtable or private perſon: but where one lies under a probable ſuſpicion only, and is not indicted, it ſeems the better opinion at this day, that no one can juſtify the breaking open doors in order to apprehend him. 6thly, Where an affray is made in an houſe in the view or hearing of a conſtable; or where thoſe who have made an affray in his preſence fly to a houſe, and are immediately purſued by him, and he is not ſuffered to enter; in order to ſuppreſs the affray in the firſt caſe, or to apprehend the affrayers in either caſe. 7thly, Whenever a perſon is lawfully arreſted for any cauſe, and afterwards eſcapes, and ſhelters himſelf in a houſe. 2 *Hawk. P. C.* 86, 87.

Alſo it is enacted by ſtat. 3 *Jac.* 1. *c.* 4. *ſect.* 35. *That upon any lawful writ, warrant, or proceſs, awarded to any ſheriff, or other officer, for the taking of any popiſh recuſant, ſtanding excommunicated for ſuch recuſancy, it ſhall be lawful, if need be, to break open any houſe.* But it hath been reſolved, that where juſtices of peace are by virtue of a ſtatute authorized to require perſons to come before them, to take certain oaths, preſcribed by ſuch ſtatute, the officer cannot lawfully break open the doors of the perſons who ſhall be named in any warrant made in purſuance of ſuch ſtatute, in order to be brought before the juſtices to take ſuch oath, becauſe ſuch warrant is not grounded on a precedent offence: neither doth it appear, that the party either is or will be guilty of any: but it ſeems clear, that if an officer enter into any houſe to ſerve any ſuch warrant, and the doors of the houſe be locked upon him, being in ſuch houſe, he or his friends may juſtify breaking them open, in order to regain his liberty;

for

for that even in the execution of civil proceſs, the law allows of the breaking open doors in the like circumſtances. 2 *Hawk. P. C.* 87. *For other matters, ſee* **Conſtable, Juſtices of Peace, Warrant, Watch.**

Articles of the Peace.

ARTICLES of the peace are a declaration in writing, made upon oath by a perſon who applies to the court of *Chancery* or *King's Bench* for ſurety or proceſs of the peace or good behaviour, of the cauſes for which ſuch proceſs ſhall be granted or awarded. Stat. 21 *Jac.* 1. *c.* 8. *ſect.* 2.

21 Jac. 1. c. 8.

Stat. 21 *Jac.* 1. *c.* 8. [*A. D.* 1623. *intituled,*] "An act to prevent and puniſh the abuſes in procuring proceſs and *ſuperſedeas* of the peace and good behaviour, out of his majeſty's courts at *Weſtminſter*, &c."

"Whereas divers turbulent and contentious perſons, ſome out of malice, and others in hope of gain, by way of compoſition, do oftentimes upon their corporal oaths, peremptorily and corruptly taken, or otherwiſe upon falſe ſuggeſtions and ſurmiſes, procure proceſs of the peace or good behaviour out of his majeſty's courts of *Chancery* and *King's Bench*, againſt divers of his majeſty's quiet ſubjects, whoſe dwellings and abodes are (for the moſt part) in counties far diſtant and remote from the ſaid courts, to their intolerable trouble and vexation, whereas they might, upon good cauſe ſhewed, receive juſtice at the hands of the juſtices of the peace in the counties where they dwelt;

Proceſs and writs of *ſuperſedeas* of the peace, or good behaviour, ſhall not be granted, but upon motion in open court.

"*Sect.* 2. For remedy whereof, be it enacted by the authority of this preſent parliament, that all proceſs of the peace or good behaviour, after the end of this ſeſſion of parliament to be granted or awarded out of the ſame courts, or either of them, againſt any perſon or perſons whatſoever, at the ſuit of, or by the proſecution of any perſon or perſons whatſoever, ſhall be void, and of none effect, unleſs ſuch proceſs ſhall be ſo granted or awarded, upon motion firſt made before the judge or judges of the ſame courts reſpectively, (ſitting in open court, and upon declaration in writing, upon their corporal oaths, to be then exhibited unto them by the parties which ſhall deſire ſuch proceſs) of the cauſes for which ſuch proceſs ſhall be granted or awarded, by or out of any the ſaid courts reſpectively, and unleſs that ſuch motion and declaration be mentioned to be made upon the back of the writ; the ſaid writings there to be entred and remain of record: (2) And that if it ſhall afterwards appear unto the ſaid courts, or either of them reſpectively, that the cauſes expreſſed in ſuch writings, or any of them, be untrue; that then the judge or judges of the ſaid courts, or either of them reſpectively, ſhall and may award ſuch coſts and damages unto the parties grieved, for their or any of their wrongful vexations in that

that behalf, as they ſhall think fit: and that the party or parties ſo offending ſhall and may be committed to priſon by ſuch judge or judges, until he or they pay the ſaid coſts and damages. (3) And whereas divers turbulent and contentious perſons, deſervedly fearing to be bound to the peace, or good behaviour by the juſtices of peace of the counties where they dwell, do oftentimes procure themſelves to be bound to the peace, or good behaviour, in the ſaid court, or one of them, upon inſufficient ſureties, or upon colourable proſecution of ſome perſon or perſons, who will be ready at all times to releaſe them at their own pleaſure; whereupon his majeſty's writs of *ſuperſedeas* are oftentimes directed to the juſtices of peace, and other his majeſty's officers, requiring them, and every of them, to forbear to arreſt or impriſon the parties aforeſaid, for the cauſes aboveſaid; by means whereof, the ſaid turbulent and contentious perſons miſdemean themſelves amongſt their neighbours with impunity, to the great offence and diſturbance of their neighbours amongſt whom they converſe and live, and to the affront of the juſtices of peace, and to the evil example and encouragement of like evil-diſpoſed perſons:

Sect. 3. " Be it therefore enacted by the authority aforeſaid, that all writs of *ſuperſedeas* after the end of this preſent ſeſſion of parliament, to be granted by, or out of either of the courts aforeſaid, ſhall be void and of none effect, unleſs ſuch proceſs be granted likewiſe upon motion in open court firſt made, as aforeſaid, and upon ſufficient ſureties, as ſhall appear unto the judge or judges of the ſame court reſpectively upon oath, to be aſſeſſed at five pounds lands, or ten pounds in goods in the ſubſidy-book, at the leaſt; (2) which oaths, and the names of ſuch ſureties, with the places of their abode, and where they ſtand ſo aſſeſſed in the ſubſidy-books, ſhall be entred and remain of record in the ſame courts: (3) And unleſs it ſhall alſo firſt appear unto the ſaid judge or judges, from whom ſuch *ſuperſedeas* is deſired, that the proceſs of the peace, or good behaviour, is proſecuted againſt him or them deſiring ſuch *ſuperſedeas bona fide*, by ſome party grieved in that court, out of which ſuch *ſuperſedeas* is deſired to be ſo awarded and directed.

Sect. 4. " And whereas divers lewd and evil-diſpoſed perſons, commonly called, common bailers, or knights of the poſt, being baſe and beggarly perſons, do oftentimes procure themſelves to be aſſeſſed at high rates in the ſubſidy-books, and ſometimes do falſly take upon them the names of other men of good ability, of purpoſe to enable themſelves to be accepted for bail, which perſons, being of ſmall or no ability or worth, are ready for lucre and gain, to become bound by recognizance, as ſureties for ſuch perſons as ſhall procure themſelves to be bound to the peace or good behaviour, as aforeſaid, by means whereof the judge or judges of the ſaid courts not knowing them, may be eaſily abuſed, and juſtice deluded:

Sect. 5. " Be it further enacted by the authority aforeſaid, that the judge or judges of the courts aforeſaid, reſpectively, or either of them, upon proof of any the miſdemeanors aforeſaid, to be committed in the obtaining of the aforeſaid writs of *ſuperſedeas*, or procuring ſuch ſurety, as aforeſaid, ſhall and may likewiſe puniſh the falſe and inſufficient ſureties, the judges.

Falſe ſureties procured for the gaining of writs of *ſuperſedeas* ſhall be puniſhed by

ties and bailers aforeſaid, and the procurers thereof, according to their diſcretions, ſo as ſuch puniſhment extend not to the loſs of life or member.

His lady exhibited articles of the peace againſt him, and was ordered ſecurity upon them; When my lord came into court, Mr. *Lloyd* deſired the articles might be read, and inſiſted they were no ground for demanding ſecurity; or if they were, yet the fact of a ſeparation under articles, upon which the complaint was grounded, was falſe, and he offered to prove it ſo. *Strange* contra, oppoſed going into any ſuch inquiry, it having never been done: and the courſe of the law had been, to give that credit to the oath of the party, as to order ſecurity immediately upon it; mentioning alſo the inconvenience in opening a door for vying and revying on ſuch occaſions. He admitted, that the court might properly review the articles, and hear any objections ariſing on the face of them. *Et per curiam*, That is all we can do, the other never was attempted before, and we muſt preſerve the courſe of the court by taking the articles to be true. Upon the review the court was of opinion, the facts as ſtated required ſecurity. And it was given accordingly.

The court will not inquire into the truth of articles of the peace. 2 Stra. 1202. Hil. 17 Geo. 2. Lord Vane's caſe.

He exhibited articles of the peace againſt his wife, and the court received the ſame without any objection.

Huſband may ſwear the peace againſt his wife. 2 Stran. 1207. Eaſt. 17 Geo. 2 Sims's caſe.

A woman exhibited articles of the peace, ſtiling herſelf the wife of the defendant, ſetting out acts of cruelty, and the pendancy of a ſuit in the eccleſiaſtical court for reſtitution of conjugal rites. The defendant coming to put in bail, inſiſted the recognizance ſhould not be taken ſo as to carry any admiſſion of the marriage. And the court ordered it ſhould run thus. "To keep the peace towards our ſovereign lord the king, and all his liege people, and particularly towards *Hannah Penn*, who hath exhibited articles of the peace againſt him the ſaid *James Bambridge*, by the name of *Hannah Bambridge* the wife of him the ſaid *James*, and that he ſhall not depart the court without leave, *&c.*"

How to take ſecurity of the peace where a marriage is diſputed. 2 Stran. 1231. Trin. 18 Geo. 2 Dominus Rex v. Bambridge.

Strange moved for a *Mandamus* to three juſtices of peace in *Brecon*, to take ſecurity on articles of the peace exhibited againſt the defendant in *B. R.* and produced an affidavit of his being ſeventy years of age, and unable to travel, and cited *Seymour*'s caſe, *Mich. 6 Ann.* and it was granted in this caſe. *N. B. Trin' ſequen'*, on affidavit of having kept the peace, and being unable to come up, the recognizance was diſcharged.

Mandamus to take ſecurity on articles. 2 Stran. 835. Trin. 3 Geo. 2 Dominus Rex v. Lewis.

Upon exhibiting articles of the peace againſt the defendant, it was objected by Mr. *Wearg*, that the fact whereon the proſecutor grounds his apprehenſion of danger appeared to be committed before the act of grace, and pardoned thereby, and the crime by that being gone, it muſt be conſidered as never done; and the court never demands ſecurity of the peace barely on a man's ſwearing he goes in danger of his life, without laying ſome fact before the court, that it may appear to be ſuch a *metus qui cadere poſſit in conſtantem virum*. *Sed per curiam:* Suppoſe it was threats only, would they not be a ground for articles, though they are not puniſhable? though the fact is pardoned, yet it may be inſtanced for an inducement to us to believe

A fact committed before the act of grace may be a ground for articles of the peace. Stran. 473. Mich. 8 Geo. Dominus Rex v. Mendez.

believe the defendant a dangerous perſon. The defendant entered into a recognizance to keep the peace.

The court *rejected articles of the peace*, which one *Thomas Borough*, of the *Devizes*, offered to ſwear againſt the defendant who *reſided at the ſame place*. Their reaſon, and their only one (for the charge was exceedingly ſtrong) was becauſe the exhibitant had not applied or endeavoured to apply to any juſtice of peace in his *own neighbourhood*, but had choſen to come hither, at ſuch a diſtance from the defendant's reſidence: which method would put the defendant to the unneceſſary inconvenience of being brought up hither, inſtead of finding ſecurity in the country. For which reaſon, they directed the exhibitant to go before ſome juſtice of peace in the *neighbourhood*; and there exhibit his articles, and pray the ſecurity of the peace, which the defendant might then find in the country, without coming up to *London* for that purpoſe.

Articles of the peace ought to be exhibited in the *neighbourhood*; that the ſecurity may be given there. 2 Bur. Rep. 780. Eaſt. 32 Geo 2. Rex v. Richard Waite.

The defendant ſtood convicted of a very groſs, malicious, corrupt and wilful perjury, in certain articles of the peace exhibited by him upon oath, againſt Sir *Thomas Allen* and his ſervants, for which perjury he had ſome time ago, been committed in court, upon his voluntarily appearing there, to complain of difficulties which he pretended to meet with, in obtaining proceſs upon his articles: Which *articles* were very *expreſs* and *poſitive*; and, by the courſe of the court, muſt have been looked upon by the court to be *true*, according to the declared opinion of the court in lord and lady *Vane*'s caſe [See *page* 136.] but, upon this man's ſubſequent application as above, and upon reading the affidavits offered by Sir *Thomas* and his ſervants and others, in anſwer to that complaint, it appeared manifeſtly to the court to be a *malicious*, voluntary and groſs perjury. Whereupon the court not only rejected his complaint, and *ſtayed proceſs* againſt the defendants, but alſo *committed* the complainant for *perjury*; taking a recognizance from the defendant's clerk in court "to proſecute him for the perjury." Which Perjury being afterwards fully proved upon the trial, the ſentence now pronounced againſt him was—To be ſet in and upon the pillory at *Charing Croſs* (on the 16th *July* next,) for one hour; and to be tranſported for *ſeven* years. Note—He appeared, throughout the whole of this tranſaction, to be a very malicious dangerous fellow.

Articles of the peace appearing falſe and malicious, proceſs was ſtayed, and the exhibitant committed for perjury. 2 Bur. Rep. 806. Trin 32 & 33 Geo. 2. Rex v. Robert Parnell.

On this woman's offering to exhibit articles of the peace againſt theſe two perſons, it appeared that the facts charged were done at *Portſmouth*. Whereupon the court objected to her, that ſhe might as well have applied to a juſtice of peace in the neighbourhood: and then the defendants would not be under a neceſſity of coming up to *London*, to put in bail. It was anſwered, that if there ſhould be any particular inconvenience ariſing therefrom, there might be a *Mandamus* to a juſtice of peace in the county, impowering him to take the ſecurity *there*: and of this, Mr. *Harvey* (as *Amicus curiæ*) mentioned ſeveral inſtances within his own obſervation and memory. At length, Mr. *Athorpe* (ſecondary of the Crown-office) propoſed, and the court came into this expedient, *viz.* That on iſſuing the attachment of the peace, which is of courſe made out upon the court's receiving the articles praying ſecurity of the peace, an *indorſement* ſhould be at the ſame time

Articles of the peace being exhibited in London, for a fact done at Portſmouth, attachment ordered to be indorſed with a direction to any juſtice to take ſecurity, &c. 2 Bur. Rep. 1039, 1040. Trin. 33 & 34 Geo 2.

Margaret Hutt's caſe, or Rex v. Bowmaſter and Epworth.

time made thereon, authorizing and directing any juſtice or juſtices of peace in that county *(Southampton)* to take the ſecurity of the peace there; ſpecifying the particular ſums wherein the principals and alſo their ſureties ſhould be bound. *Per Cur.* It was ordered accordingly.

For other matters, ſee **Surety of the Peace.**

Aſſault and Battery.

ASSAULT is derived from the old latin word *aſſultus*, that is, *a leaping on*, or from the *French* verb *aſſailer*, *to attack*, and ſignifies an attempt or offer, with force and violence, to do a corporal hurt to another, as by ſtriking at him without a weapon; or preſenting a gun at him, at ſuch a diſtance to which the gun will carry; or pointing a pitch-fork at him, ſtanding within the reach of it; or by holding up one's fiſt at him; or by any other ſuch like act, done in any threatening manner. 1 *Hawk.* 133.

Battery, (from the *French Battre*, to ſtrike, or from the *Saxon Batte*, a club) ſeems to be when any injury whatſoever, be it never ſo ſmall, is actually done to the perſon of a man, in an angry or revengeful, or rude, or inſolent manner; as by ſpitting in his face, or any way touching him in anger, or violently juſtling him out of the way, and the like. 1 *Hawk.* 134.

Any injury whatſoever, be it never ſo ſmall, being actually done to the perſon of a man, in an angry or revengeful, or rude or inſolent manner, as by ſpitting in his face, or any way touching him in anger, or violently juſtling him out of the way are batteries in the eye of the law. 6 *Mod.* 149, 172. 1 *Mod.* 3. 3 *Lev.* 404. 1 *Hawk. P. C.* 134.

But to lay one's hand gently on another, whom an officer has a warrant to arreſt, and to tell the officer that this is the man he wants, is not a battery. 2 *Roll. Abr.* 546. 1 *Hawk. P. C.* 134.

So if two by conſent play at cudgels, and one happens to hurt the other, as their intent was lawful and commendable, in promoting courage and activity, it does not ſeem to amount to battery. *Dalt. c.* 22. *Bro. Coron.* 229.

If *A.* lays his hand on his ſword, and ſays, that *if it were not aſſize time I would not take ſuch language from you*, that is no aſſault, for it is plain he did not deſign to do him any corporal hurt at that time, and a man's intention muſt operate with his act in conſtituting an aſſault. 1 *Mod.* 3.

It ſeems agreed, that at this day no words whatſoever, be they never ſo provoking, can amount to an aſſault, notwithſtanding the many ancient opinions to the contrary. 1 *Hawk. P. C.* 134.

Every battery includes an aſſault; therefore if the defendant be found guilty of the battery, it is ſufficient. *Salk.* 384. 1 *Hawk. P. C.* 134.

So

So if one ſoldier hurts another by diſcharging a gun in exerciſe, this cannot amount to a battery, though if it be done without ſufficient caution, he is liable to an action at the ſuit of the party injured. *Hob.* 134. 2 *Roll. Abr.* 548.

If an officer, having a warrant againſt one who will not ſuffer himſelf to be arreſted, beat or wound him in the attempt to take him; or if a parent in a reaſonable manner chaſtiſe his child, or a maſter his ſervant, being actually in his ſervice at the time; or a ſchoolmaſter his ſcholar, or a gaoler his priſoner, or even a huſband his wife; or if one confine a friend who is mad, and bind and beat him, in ſuch manner as is proper in ſuch circumſtances; or if a man force a ſword from one who offers to kill another therewith; or if a man gently lay hands on another, and thereby ſtay him from inciting a dog againſt a third perſon; or if I beat one, without wounding him, or throwing at him a dangerous weapon, who wrongfully endeavours with violence to diſpoſſeſs me of my land, or goods, and will not deſiſt upon my laying my hands gently on him, and diſturbing him; or if a man beat, or, as ſome ſay, wound, or maim one who makes an aſſault upon his perſon, or that of his wife, parent, child, or maſter, eſpecially, if it appear that he did all he could to avoid fighting before he gave the wound; or if a man fight with or beat one who attempts to kill any ſtranger; or if a man even threaten to kill one who puts him in fear of death in ſuch a place where he cannot ſafely fly from him; or if one impriſon thoſe whom he ſees fighting, till the heat be over; in theſe caſes it ſeems the party may juſtify the aſſault and battery. 1 *Hawk. P. C.* 130, 131. A perſon may juſtify an aſſualt, in defence of his perſon, or of his wife, or maſter or parent, or child within age; and even a wounding may be juſtified in defence of his perſon, but not of his poſſeſſions. 3 *Salk.* 46. In what caſes an aſſault and battery may be juſtified.

And where a man in his own defence beats another who firſt aſſaults him, he may take advantage thereof, both upon an indictment and upon an action; but with this difference, that on an indictment he may give it in evidence upon the plea of not guilty, but on an action he muſt plead it ſpecially. 1 *Hawk.* 134. There is no doubt but that the wrong-doer is ſubject both to an action at the ſuit of the party, wherein he ſhall render damages; and alſo to an indictment at the ſuit of the king, wherein he ſhall be fined according to the heinouſneſs of the offence. 1 *Hawk.* 134. How unlawful aſſaults and batteries are puniſhed.

Stat. 9 *Ann. c.* 16. [*A. D.* 1710. *intituled*,] "An act to make an attempt on the life of a privy counſellor, in the execution of his office, to be felony without benefit of clergy."

"Whereas *Anthony de Guiſcard*, commonly called marquis *de Guiſcard*, a *French* papiſt, reſiding in *England* under her majeſty's protection, and ſubſiſted by her majeſty's bounty for ſome years paſt, was charged with holding a traiterous correſpondence with *France*, and being taken into cuſtody for ſuch his treaſon by *Nathan Wilcocks*, of the pariſh of St. *James Weſtminſter* in the county of *Middleſex*, gentleman, one of her majeſty's meſ-

ſengers in ordinary, by virtue of a warrant of the right honourable *Henry Saint John* eſq; one of her majeſty's principal ſecretaries of ſtate, and on the eighth day of *March* in the year of our Lord one thouſand ſeven hundred and ten, being under examination before a committee of her majeſty's moſt honourable privy council for the ſame, perceiving his ſaid treaſon to have been fully detected, being conſcious of his guilt, and dreading the pain and infamy of his approaching puniſhment, in hopes of preventing the ſame, and in revenge for the diſcovery of the ſaid offence, did, with a penknife, in a barbarous and villainous manner, ſtab the right honourable *Robert Harley*, eſq; chancellor of her majeſty's *Exchequer*, and one of her majeſty's privy council, then preſent, aſſiſting in that committee, and endeavoured to wound others of her majeſty's privy council there: And whereas in the preventing further miſchief from the rage of the ſaid *Anthony de Guiſcard*, and in apprehending and ſecuring him, he the ſaid *Anthony de Guiſcard* was neceſſarily and unavoidably bruiſed and wounded, and is ſince dead in the priſon of *Newgate* in the city of *London:* And whereas no ſufficient puniſhment is provided for aſſaulting or wounding a privy counſellor in the execution of his office, by any law now in being; to the end that all perſons may be deterred from committing ſuch offences, and for preventing the like miſchiefs for the time to come; Be it enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons in this preſent parliament aſſembled, and by the authority of the ſame, that if any perſon or perſons, from and after the firſt day of *May* in the year of our Lord one thouſand ſeven hundred and eleven, ſhall unlawfully attempt to kill, or ſhall unlawfully aſſault, and ſtrike or wound any perſon, being one of the moſt honourable privy council of her majeſty, her heirs or ſucceſſors, when in the execution of his office of a privy counſellor in council, or in any committee of council, that then the perſon or perſons ſo offending, being thereof convicted in due form of law, ſhall be and are hereby declared to be felons, and ſhall ſuffer death as in caſes of felony, without the benefit of clergy.

After 1 May 1711. whoever ſhall attempt to kill, &c a Privy Counſellor in the execution of his office, declared a felon, and ſhall ſuffer death as ſuch without clergy.

Nathan Wilcocks, &c. ſaved harmleſs.

Sect. 2. "And be it further enacted by the authority aforeſaid, that the ſaid *Nathan Wilcocks* (who by an inquiſition taken the ſeventeenth day of the ſaid month of *March*, before *George Rivers* eſq; coroner of the ſaid city of *London*, on view of the body of the ſaid *Anthony de Guiſcard*, then and there lying dead) is found to have given him the ſaid *Anthony de Guiſcard* ſeveral mortal bruiſes of which he died, and all and every other perſon and perſons, who were aſſiſting in the defence of the ſaid *Robert Harley*, and in the apprehending and ſecuring the ſaid *Anthony de Guiſcard*, and did, in ſo doing, aſſault, bruiſe, or wound the ſaid *Anthony de Guiſcard*, ſhall be, and are hereby indemnified and ſaved harmleſs therefore; and ſuch their actings and doings are hereby declared to have been neceſſary and lawful."

Stat. 7 *Geo.* 2. *c.* 21. [*A. D.* 1734. *intituled,*] "An act for the more effectual puniſhment of aſſaults with intent to commit robbery."

"Whereas many of his majeſty's ſubjects have of late frequently been put in great fear and danger of their lives, by wicked and ill-diſpoſed perſons aſſaulting and attempting to rob them: And whereas the puniſhment of ſuch offenders is not adequate to the heinouſneſs of that crime, nor ſufficient to deter wicked perſons from ſuch attempts; to the end therefore that all perſons may be deterred from committing ſuch offences, and for the greater puniſhment of ſuch offenders, and for the more effectual preventing of the like miſchiefs for the future: Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons, from and after the firſt day of *May* in the year of our Lord one thouſand ſeven hundred and thirty-four, ſhall, with any offenſive weapon or inſtrument, unlawfully and maliciouſly aſſault, or ſhall by menaces, or in or by any forcible or violent manner, demand any money, goods or chattels, of or from any other perſon or perſons with a felonious intent to rob or commit robbery upon ſuch perſon or perſons, that then and in every ſuch caſe all and every ſuch perſon and perſons ſo offending, being thereof lawfully convicted, ſhall be, and be adjudged guilty of felony, and every ſuch offender and offenders ſhall be ſubject and liable to be tranſported as in caſes of felony; and the courts by and before whom he, ſhe, or they ſhall be tried and convicted, ſhall have full power and authority of tranſporting ſuch offenders for the ſpace of ſeven years, upon the like terms and conditions, and by the ſame ways and means, and in like manner as other felons may or are to be tranſported to any of his majeſty's colonies or plantations in *America*, by force or virtue of any law for that purpoſe now in being.

After 1 May, 1734, perſons convicted of aſſaulting others with offenſive weapons, and a deſign to rob, ſhall be tranſported for 7 years.

Sect. 2. "And be it further enacted by the authority aforeſaid, that if any ſuch offender or offenders aforeſaid, who ſhall be ordered for tranſportation by or by virtue of this preſent act, ſhall break gaol, or eſcape before ſuch tranſportation, or ſhall return into any part of *Great Britain* or *Ireland* before the expiration of the ſaid ſeven years, for which ſuch offender or offenders ſhall be ſo ordered to be tranſported, as aforeſaid, contrary to the intent and meaning hereof; all and every ſuch perſon and perſons ſo breaking gaol, eſcaping, or returning into any part of *Great Britain* or *Ireland*, within the time aforeſaid, being thereof lawfully convicted, ſhall ſuffer death as felons, and have execution awarded againſt them as perſons attainted of felony, without benefit of clergy."

Such convicts breaking gaol, or unlawfully returning from tranſportation, ſhall ſuffer death.

Stat. 6 *Geo.* 1. *c.* 23. [*A. D.* 1719. *intituled,*] "An act for the further preventing robbery, burglary, and other felonies, and for the more effectual tranſportation of felons."

6 Geo. 1. c. 23.

Sect. 11. "And be it further enacted by the authority aforeſaid, that if any perſon or perſons ſhall at any time or times, from and after the twenty-

After June 24 1720, aſſaulting any perſon in the ſtreets,

&c. to tear their cloaths, &c. ſhall be guilty of felony, and may be tranſported for 7 years.

twenty-fourth day of *June* in the year of our Lord one thouſand ſeven hundred and twenty, wilfully and maliciouſly aſſault any perſon or perſons in the publick ſtreets or highways, with an intent to tear, ſpoil, cut, burn, or deface, and ſhall tear, ſpoil, cut, burn, or deface the garments or cloaths of ſuch perſon or perſons, that then all and every perſon and perſons ſo offending, being thereof lawfully convicted, ſhall be and be adjudged to be guilty of felony; and every ſuch felon and felons ſhall be ſubject, and liable to the like pains and penalties as in caſe of felony; and the courts by and before whom he, ſhe, or they ſhall be tried, ſhall have full power and authority of tranſporting ſuch felons for the ſpace of ſeven years, upon the like terms and conditions as are given, directed, or enacted by this or the before recited act."

Aſſizes.

ASSISE, (Fr. *aſſis*) according to our ancient books is defined to be an aſſembly of knights, and other ſubſtantial men, with the bailiff or juſtice in a certain place, and at a certain time appointed. *Cuſtom. Normand. cap.* 24. This word is probably derived from the *Latin* verb *aſſideo*, to ſit together; and is alſo taken for the court, place or time, when and where the writs and proceſſes of *aſſiſe* are handled or taken. And in this ſignification *aſſiſe* is general; as when the juſtices go their ſeveral circuits with commiſſion to take all aſſiſes; or ſpecial, where a ſpecial commiſſion is granted to certain perſons, (formerly oftentimes done) for taking an *aſſiſe* upon one or two diſſeiſins only. *Bract. lib.* 5. *Cowell.*

Concerning the general *aſſiſe*, all the counties of *England* are divided into ſix circuits, and two judges are aſſigned by the king's commiſſion to every circuit, who hold their *aſſiſes* twice a year in every county, (except in *Middleſex*, where the King's courts of record do ſit, and where his courts for his counties palatine are held) and have five ſeveral commiſſions. 1. Of *oyer* and *terminer*, directed to them and many other gentlemen of the county, by which they are empowered to try treaſons, felonies, *&c.* and this is the largeſt commiſſion they have. 2. *Of gaol-delivery*, directed to the judges and clerk of *aſſiſe* aſſociate, which gives them power to try every priſoner in the gaol committed for any offence whatſoever, but none but priſoners in the gaol; ſo that one way or other they rid the gaol of all the priſoners in it. 3. *Of aſſiſe*, directed to themſelves only and the clerk of *aſſiſe*, to take *aſſiſes* and do right upon writs of *aſſiſe* brought before them by ſuch as are wrongfully thruſt out of their lands and poſſeſſions: which writs were heretofore frequent, but now men's poſſeſſions are ſooner recovered by ejectments, *&c.* 4. *Of niſi prius*, directed to the judges and clerk of *aſſiſe*, by which the civil cauſes grown to iſſue in the courts above, are tried in the vacation by a jury of twelve men

men of the county where the cauſe of action ariſes; and on return of the verdict of the jury to the court above, the judges there give judgment. 5. *A commiſſion of the peace*, in every county of the circuits; and all juſtices of the peace of the county are bound to be preſent at the *aſſiſes*; and ſheriffs are alſo to give their attendance on the judges, or they ſhall be fined. *Bacon's Elem.* 15, 16, *&c.*

There is a commiſſion of the peace, *oyer and terminer* and gaol-delivery of *Newgate*, held ſeveral times in a year, for the city of *London* and county of *Middleſex*, at *Juſtice-Hall* in the *Old Baily*, where the lord mayor is the chief judge. In *Wales* there are but two circuits, *North* and *South Wales*; for each of which the king appoints two perſons learned in the laws to be judges. *Stat.* 18 *Eliz. cap.* 8. If juſtices ſit by force of a commiſſion, and do not adjourn the commiſſion, it is determined. 4 *Inſt.* 265. The conſtitution of the juſtices of *aſſiſe* was begun by *Henry* 2. though ſomewhat different from what they now are: and by *Magna Charta*, juſtices ſhall be ſent through every county once a year, who with the knights of the reſpective ſhires ſhall take aſſizes of *novel diſſeiſin*, *&c.* in their proper ſhires, and what cannot be determined there, ſhall be ended by them in ſome other place in their circuit; and if it be too difficult for them, it ſhall be referred to the juſtices of the bench, there to be ended. 9 *Hen.* 3. *cap.* 12. Juſtices of *aſſiſe*, *&c.* are to hold their ſeſſions in the chief towns of the county; and their records to be ſent into the *Exchequer*. 6 *R.* 2. 9 *Ed.* 3. By *ſtat.* 21 *Geo.* 2. *c.* 12. the ſummer *aſſiſes* in *Buckinghamſhire* ſhall be held at the town of *Buckingham*. *Aſſiſe* is likewiſe uſed for a jury, by whom *aſſiſes* of *novel diſſeiſin* are tried. *Lit.* cap. *Rents.* The panels of *aſſiſes* ſhall be arrayed, and a copy indented delivered by the ſheriff, *&c.* if demanded, on pain of 40*l.* by ſtatute 6 *Hen.* 6. *cap.* 2. And *aſſiſe* is taken for a *writ* for recovery of poſſeſſion of things immoveable, whereof any one and his anceſtors have been diſſeiſed. Likewiſe in another ſenſe, it ſignifies an ordinance or ſtatute. *Reg. Orig.* 279. *Lit.* cap. *Rents.* *Termes de la Ley.* And there are four writs of *aſſiſe:* an aſſiſe of *novel diſſeiſin*, an aſſiſe of *mort d'anceſtor*, an aſſiſe of *darrein preſentment*, and an aſſiſe of *juris utrum*. *Co. Lit.* 155. *a.*

Attachment.

ATTACHMENT, (from the Fr. *attacher*) is a proceſs that iſſues at the diſcretion of the judges of a court of record, againſt a perſon for ſome contempt, for which he is to be committed, and may be awarded by them upon a bare ſuggeſtion, or on their own knowledge without any appeal, indictment or information; for though by the ſtatute of *Magna Charta*, none are to be impriſoned *ſine judicio parium*, *vel per legem terræ*, *without judgment of their peers or equals*, *or by the law of the land*; yet this ſummary

ſummary method of proceeding being abſolutely neceſſary to the furtherance and execution of juſtice, ſeems to have been long practiſed, and is certainly now eſtabliſhed as part of the law of the land. *Lamb. Eiren. lib.* 1. *c.* 16. 1 *Bac. Abr.* 180.

All courts of record have a diſcretionary power over their own officers, and are to ſee that no abuſes be committed by them, which may bring diſgrace on the courts themſelves; therefore if a ſheriff or other officer ſhall be guilty of a corrupt practice in not ſerving a writ; as if he refuſe to do it, unleſs paid an unreaſonable gratuity from the plaintiff, or receive a bribe from the defendant, or give him notice to remove his perſon or effects, in order to prevent the ſervice of any writ; the court which awarded it may puniſh ſuch offences in ſuch manner as ſhall ſeem proper, by attachment, *&c.* as well as the court of *King's Bench*, which has a general ſuperintendancy over all crimes whatſoever, but commonly leaves offences of this kind, in relation to cauſes in other courts, to be puniſhed by ſuch courts to which they more immediately belong. 2 *Hawk.* 142.

Seſſions cannot award an attachment for not performing an order. 2 Seſſ Ca. 176. Hil. 8 Geo. 2. The King againſt Bartlet.

An order had been made on overſeers to pay over fifty-ſix pounds to the ſucceeding overſeers on the 43 *Eliz. cap.* 2. Appeal to the ſeſſions, who confirmed the order, and for non-compliance made an order againſt the defendant for an attachment for a contempt. Moved to quaſh this order for an attachment, on the common principle, that the ſeſſions has no power to award an attachment. But the party ought to have been indicted. To which it was anſwered, that the ſtatute of *Eliz.* gives the ſeſſion a general juriſdiction to make ſuch order as to them ſhould ſeem meet. And though in general he admitted the ſeſſions could not award an attachment; yet under this act they had a general authority, and as a court of record they might award an attachment for a contempt. *But by the court:* They cannot award an attachment; ſaid they would not determine how it would have been if they had committed him, but the ordinary and proper method is by indictment. Order quaſhed.

Attainder.

ATTAINDER is a conviction of any perſon of a crime or fault whereof he was not convicted before; as if a man hath committed felony, or treaſon, and thereof is indicted, arraigned, and found guilty, *and hath judgment*, then he is ſaid to be *attainted*. And this may be two ways, the one upon appearance, the other upon default. The attainder upon appearance is by confeſſion, or verdict; the attainder upon default is by proceſs until he be outlawed. *Termes de la ley.*

The difference between a man *attainted* and *convicted* is, that a man is ſaid to be convicted *before* he hath judgment, as if a man be convicted by confeſſion or verdict; and when he hath his judgment upon the verdict

or

or confeſſion, then he is ſaid to be *attainted*. Co. Lit. 390. b. *For the conſequences of being attainted or convicted of treaſon or felony, ſee* Treaſon, Felony.

Attaint.

ATTAINT is a writ that lieth after judgment againſt a jury that have given a falſe verdict in any court of record, in an action real or perſonal, where the debt or damages amount to above 40 *s.* It is called *attaint*, becauſe the party endeavours thereby to ſtain or *taint* the credit of the jury with perjury, by whoſe verdict he is aggrieved; for he ſhall have this writ againſt the twelve men; and when they are at iſſue, it ſhall be tried by twenty-four jurors, and if the falſe verdict be found, the twelve men are attainted; and then the judgment ſhall be, that their meadows ſhall be plowed, their houſes broken down, their woods turned up, and all their lands and tenements forfeited to the King; but if it paſs againſt him who brought the attaint, he ſhall be impriſoned, and grievouſly ranſomed at the King's will. *Cowell. Termes de la ley. See Co. Lit.* 294. *b.* See Jury.

Attorney.

ATTORNEY, (*attornatus*) is a perſon appointed by another to do any thing in his ſtead, and is as much as *procurator* or *ſyndicus* in the civil law. *Cowell. Weſt* in his *Symb. part.* 1. *lib.* 2. *ſect.* 559. defines *attornies* thus: *Attornies* are ſuch perſons as by the conſent, commandment, or requeſt of another, do take heed, ſee to and take upon them the charge of other men's buſineſs in their abſence.——But the perſon here treated of is an attorney at law, who is appointed to proſecute and defend for his client, and is conſidered as an officer belonging to the courts of juſtice; concerning whom are ſeveral ſtatutes and adjudications.

Before the ſtatute of *Weſt.* 2. *c.* 10. [13 *Edw.* 1. *A. D.* 1285.] all attornies were made by letters patent under the great ſeal, commanding the juſtices to admit the perſon to be his *attorney*. Theſe patents, where they were obtained, ſeemed to have been inrolled by a proper officer, called the clerk of the warrants; and alſo the courts inrolled thoſe patents on which any proceedings were. If ſuch letters patent could not be obtained, the perſons were obliged to appear each day in court in their proper perſons. *Gilb. H. C. P.* 32, 33.

The ſaid ſtatute of *Weſt.* 2. gives to all perſons a liberty of appearing, and appointing an *attorney*, as if they had letters patent, and therefore the clerk of the warrants received each perſon's warrant, and upon the warrant it equally appeared to the court, that he had appointed ſuch a one his attorney to the end of the cauſe, unleſs revoked; ſo that on each act there is no occaſion of the plaintiff's and defendant's preſence, as was uſed before that time. This authority continues till judgment, and for a year and a day, and afterwards to ſue out execution, and for a longer time, if they continue execution; but if not, the judgment is ſuppoſed to be ſatisfied; and to make it appear otherwiſe, the plaintiff muſt again come into court, which he either does by a *ſcire fac'*, or an action of debt on the judgment. *Gilb. H. C. P.* 33.

33 Hen. 6. c. 7.

Stat. 33 *Hen.* 6. *cap.* 7. [*A. D.* 1455. *intituled*,] "How many attornies may be in *Norfolk* and *Suffolk*, how many in *Norwich*."

4 Inſt 76. A practice of contentious attornies, to ſtir up ſuits for their private profits.

Item, "Whereas of time not long paſt within the city of *Norwich*, and the counties of *Norfolk* and *Suffolk*, there were no more but ſix or eight attornies at the moſt, coming to the king's courts, in which time great tranquillity reigned in the ſaid city and counties, and little trouble or vexation was made by untrue and foreign ſuits; (2) and now ſo it is, that in the ſaid city and counties there be fourſcore attornies, or more, the more part of them having no other thing to live upon, but only his gain by the practice of attorneyſhip; and alſo the more part of them not being of ſufficient knowledge to be an attorney, (3) which come to every fair, market, and other places, where is any aſſembly of people, exhorting, procuring, moving, and inciting the people to attempt untrue and foreign ſuits for ſmall treſpaſſes, little offences, and ſmall ſums of debt, whoſe actions be triable and determinable in court barons, (4) whereby proceed many ſuits, more of evil will and malice, than of truth of the thing, to the manifold vexations and no little damage of the inhabitants of the ſaid city and counties, and alſo to the perpetual diminution of all the court barons in the ſaid counties, unleſs convenient remedy be provided in this behalf. (5) The foreſaid lord the king conſidering the premiſſes, by the advice, aſſent, and authority aforeſaid, hath ordained and ſtabliſhed, That at all times from henceforth there ſhall be but ſix common attorneys in the ſaid county of *Norfolk*, and ſix common attorneys in the ſaid county of *Suffolk*, and two common attorneys in the ſaid city of *Norwich*, to be attorneys in the courts of record, (6) and that all the ſaid fourteen attorneys ſhall be elected and admitted by the two chief juſtices of our lord the king for the time being, of the moſt ſufficient and beſt inſtructed by their diſcretions; (7) and that the election and admiſſion of all attorneys, which ſhall be elected and admitted by the ſaid juſtices for the time being, above the ſaid number in the ſaid counties, ſhall be void, and of no authority nor record; (8) and if any perſon or perſons uſurp, or preſume to be attorney in courts of record in the ſaid counties or city, otherwiſe than before is ſpecified, and that found by inquiſition taken before

There ſhall be but ſix common attornies in Norfolk, ſix in Suffolk, and two in Norwich.

Juſtices of peace ſhall have authority to inquire of offenders.

fore the juſtices of peace in the ſaid city or counties (which ſhall have power, by virtue of this ordinance, to inquire thereof in their ſeſſions) or in any other manner lawfully proved, that then he or they that ſo preſume, if they be lawfully convict, ſhall forfeit twenty pounds as often as he or they be ſo convict, the one half thereof to be taken to the king's uſe, and the other half to his uſe which for the ſame will ſue; (9) and he that thereof will ſue, ſhall have an action of debt againſt any ſuch perſon which ſo preſumeth to be attorney, (10) and ſuch proceſs for recovery of the ſame, as lieth in an action of debt at the common law upon an obligation. (11) Provided always, that the ſaid ordinance begin, and firſt take effect, at the feaſt of *Eaſter* next coming, and not before, if the ſame ordinance ſeem reaſonable to the juſtices."

The forfeiture of offenders.

Stat. 3 *Jac. cap.* 7. [*A. D.* 1605. *intituled*,] "An act to reform the multitudes and miſdemeanors of attornies and ſolicitors at law, and to avoid unneceſſary ſuits and charges in law." 3 Jac. 1. c. 7.

"For that through the abuſe of ſundry attornies and ſolicitors by charging their clients with exceſſive fees and other unneceſſary demands, ſuch as were not, nor ought by them to have been employed or demanded, whereby the ſubjects grow to be overmuch burthened, and the practice of the juſt and honeſt ſerjeant and counſellor at law greatly ſlandered: and for that to work the private gain of ſuch attornies and ſolicitors, the client is oftentimes extraordinarily delayed: (2) Be it enacted by the authority of this preſent parliament, That no attorney, ſolicitor, or ſervant to any, ſhall be allowed from his client or maſter, of or for any fee given to any ſerjeant or counſellor at law, or of or for any ſum or ſums of money given for copies to any clerk or clerks, or officers in any court or courts of record at *Weſtminſter*, unleſs he have a ticket ſubſcribed with the hand and name of the ſame ſerjeant or counſellor, clerk or clerks, or officers aforeſaid, teſtifying how much he hath received for his fee, or given or paid for copies, and at what time, and how often: (3) And that all attornies and ſolicitors ſhall give a true bill unto their maſters or clients, or their aſſigns, of all other charges concerning the ſuits which they have for them, ſubſcribed with his own hand and name, before ſuch time as they or any of them ſhall charge their clients with any the ſame fees or charges: (4) And that if the attorney or ſolicitor do or ſhall willingly delay his clients ſuits to work his own gain, or demand by his bill any other ſums of money, or allowance upon his account of any money which he hath not laid out or diſburſed, that in every ſuch caſe, the party grieved ſhall have his action againſt ſuch attorney or ſolicitor, and recover therein coſts and treble damages, and the ſaid attorney and ſolicitor ſhall be diſcharged from thenceforth from being an attorney or ſolicitor any more.

An attorney ſhall have a ticket of the money which he giveth for fees, &c. 1 Salk. 86. Aleyn 4.

A bill of charges. Carthew 57, 147. Raym. 245.

An attorney delaying his client's ſuit, or demanding more than is due.

Sect. 2. "And to avoid the infinite numbers of ſolicitors and attornies, Be it enacted by the authority of this preſent parliament, That none ſhall from henceforth be admitted attornies in any the king's courts of record aforeſaid, but ſuch as have been brought up in the ſame courts,

Who only ſhall be attornies or ſolicitors.

or otherwiſe well practiſed in ſoliciting of cauſes, and have been found by their dealings to be ſkilful and of honeſt diſpoſition: (2) And that none to be ſuffered to ſolicit any cauſe or cauſes in any the courts aforeſaid, but only ſuch as are known to be men of ſufficient and honeſt diſpoſition: (3) And that no attorney ſhall admit any other to follow any ſuit in his name; upon pain that both the attorney and he that followeth any ſuch ſuit in his name, ſhall each of them forfeit for ſuch offence, twenty pound; the one moiety whereof to our ſovereign lord the king, his heirs and ſucceſſors, and the other moiety to the party grieved, to be recovered in any the ſaid courts of record aforeſaid, by original writ of debt, bill, plaint, or information, wherein no manner of eſſoign, wager of law, or protection ſhall be allowed: And that the attorney in ſuch caſe ſhall be excluded from being an attorney for ever thereafter."

No following of a ſuit in another's name.

2 Geo. 2. c. 23.

Stat. 2 *Geo.* 2. *c.* 23. [*A. D.* 1729. *intituled*,] "An act for the better regulation of attornies and ſolicitors."

"For the better regulation of attornies and ſolicitors, practiſing in any of the courts of law or equity, in that part of *Great Britain* called *England*, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That no perſon, from and after the firſt day of *December* one thouſand ſeven hundred and thirty, ſhall be permitted to act as an attorney, or to ſue out any writ or proceſs, or to commence, carry on, or defend, any action or actions, or any other proceedings, either before or after judgment obtained, in the name or names of any other perſon or perſons in his majeſty's court of *King's Bench*, *Common Pleas*, or *Exchequer*, or dutchy of *Lancaſter*, or in any of his majeſty's courts of great ſeſſions in *Wales*, or in any of the courts of the counties palatine of *Cheſter*, *Lancaſter*, and *Durham*, or in any other court of record in that part of *Great Britain* called *England*, wherein attornies have been accuſtomably admitted, and ſworn, unleſs ſuch perſon ſhall take the oath herein after directed and appointed to be taken by attornies, and ſhall alſo be admitted and inrolled, on or before the ſaid firſt day of *December* one thouſand ſeven hundred and thirty, in ſuch of the ſaid courts where he ſhall act as an attorney, or ſhall be ſworn, admitted, and inrolled, in the ſaid reſpective courts after the ſaid firſt day of *December* one thouſand ſeven hundred and thirty, in ſuch manner as is herein after directed.

After 1 Dec. 1730. no perſon to be admitted an attorney, unleſs he take the oath, and be inrolled.

Sect. 2. "And be it further enacted by the authority aforeſaid, That the judges of the ſaid courts reſpectively, or any one or more of them, ſhall, and they are hereby authorized and required, before they ſhall admit ſuch perſon to take the ſaid oath, to examine and inquire, by ſuch ways and means as they ſhall think proper, touching his fitneſs and capacity to act as an attorney; and if ſuch judge or judges reſpectively ſhall be thereby ſatisfied, that ſuch perſon is duly qualified to be admitted to act as an attorney, then, and not otherwiſe, the ſaid judge or judges of

Judges to examine into his capacity, before admiſſion.

the ſaid courts reſpectively ſhall, and they are hereby authorized to adminiſter to ſuch perſon the oath herein after directed to be taken by attornies, and after ſuch oath taken, to cauſe him to be admitted an attorney of ſuch court reſpectively, and his name to be inrolled as an attorney in ſuch court reſpectively, without any fee or reward, other than one ſhilling for adminiſtring ſuch oath; which admiſſion ſhall be written on parchment in the *Engliſh* tongue, in a common legible hand, and ſigned by ſuch judge or judges reſpectively, whereon the lawful ſtamp ſhall be firſt impreſſed, and ſhall be delivered to ſuch perſon ſo admitted.

None to be permitted to act as a ſolicitor, unleſs he take the oath, and be inrolled.

Sect. 3. " And be it further enacted by the authority aforeſaid, That no perſon, from and after the firſt day of *December* in the year of our Lord one thouſand ſeven hundred and thirty, ſhall be permitted to act as a ſolicitor, or to ſue out any writ or proceſs, or to commence, carry on, ſolicit, or defend any ſuit, or any proceedings, in the name of any other perſon, in any court of equity, either in his majeſty's high court of *Chancery*, court of equity in the *Exchequer* chamber, court of the dutchy chamber of *Lancaſter* at *Weſtminſter*, or courts of the counties palatine of *Cheſter*, *Lancaſter*, or *Durham*, or of the great ſeſſions in *Wales*, or in any other inferior court of equity in that part of *Great Britain* called *England*, unleſs ſuch perſon ſhall take the oath herein after directed and appointed to be taken by ſolicitors, in courts of equity, and ſhall alſo be admitted and inrolled on or before the ſaid firſt day of *December* one thouſand ſeven hundred and thirty, in ſuch of the ſaid courts of equity, where he ſhall act as a ſolicitor, or ſhall be ſworn, admitted, and inrolled, after the ſaid firſt day of *December*, in ſuch manner as is herein after directed.

Court of equity to examine ſolicitors.

Sect. 4. " And be it further enacted by the authority aforeſaid, That the maſter of the rolls, or two of the maſters of the *Chancery*, the barons of the court of *Exchequer*, the chancellor of the dutchy of *Lancaſter*, and the judges of the ſaid other courts of equity for the time being reſpectively, or any one or more of them, ſhall, and they are hereby authorized and required, before he or they ſhall admit any perſon to take the ſaid oath, to examine and inquire, by ſuch ways and means as he or they ſhall think proper, touching his fitneſs and capacity to act as a ſolicitor in ſuch courts of equity reſpectively; and if the ſaid maſter of the rolls, or two maſters of the *Chancery*, the barons of the court of *Exchequer*, the chancellor of the dutchy of *Lancaſter*, or the judges of the ſaid other courts of equity for the time being, or any one or more of them reſpectively, ſhall be thereby ſatisfied, that ſuch perſon is duly qualified to be admitted to act as a ſolicitor in ſuch court of equity; then, and not otherwiſe, the ſaid maſter of the rolls, two maſters of the *Chancery*, the barons of the court of *Exchequer*, the chancellor of the dutchy of *Lancaſter*, and the judges of the ſaid other courts of equity for the time being reſpectively, or any one or more of them ſhall, and they are hereby authorized to adminiſter to ſuch perſon the oath herein after directed to be taken by ſolicitors, and, after ſuch oath taken, to cauſe him to be admitted a ſolicitor in ſuch court of equity, and his name to be inrolled as a ſolicitor in ſuch court, without any fee or reward, other than one ſhilling for adminiſtring ſuch oath, which admiſ-

ſion

ſion ſhall be written on parchment in *Engliſh*, and in a common legible hand, and ſigned by the maſter of the rolls, two maſters of the chancery, the barons of the exchequer, the chancellor of the dutchy of *Lancaſter*, and the judges of the ſaid other courts of equity reſpectively, or ſuch of them who ſhall admit ſuch perſon to be a ſolicitor, whereon a treble forty ſhillings ſtamp ſhall be firſt impreſſed, and ſhall be delivered to the perſon ſo admitted.

After 1 Dec. 1730, none to act as attorney unleſs he has ſerved a clerkſhip, and been admitted.

Sect. 5. "And be it further enacted by the authority aforeſaid, That from and after the firſt day of *December* one thouſand ſeven hundred and thirty, no perſon, who ſhall not before the ſaid firſt day of *December* have been ſworn, admitted, and inrolled, purſuant to the directions of this act, ſhall be permitted to act as an attorney, or to ſue out any writ or proceſs, or to commence, carry on, or defend any action or actions, or any proceedings, either before or after judgment obtained, in the name or names of any other perſon or perſons, in any of the courts of law aforeſaid, unleſs ſuch perſon ſhall have been bound by contract in writing, to ſerve as a clerk for and during the ſpace of five years, to an attorney duly and legally ſworn and admitted, as herein before is directed, in ſome or one of the courts herein before mentioned; and that ſuch perſon, for and during the ſaid term of five years, ſhall have continued in ſuch ſervice; and alſo unleſs ſuch perſon, after the expiration of the ſaid term of five years, ſhall be examined, ſworn, admitted, and inrolled in the ſame manner as the perſons, who ſhall be admitted attornies of the ſaid courts, are herein before required to be examined, ſworn, admitted, and inrolled."

Judges, before they admit them to take the oath, to examine their fitneſs.

Sect. 6. "And be it further enacted by the authority aforeſaid, That the judges of the ſaid courts reſpectively, or any one or more of them, ſhall, and they are hereby authorized and required, before they ſhall admit ſuch perſon to take the ſaid oath, to examine and enquire, by ſuch ways and means as they ſhall think proper, touching his fitneſs and capacity to act as an attorney; and if ſuch judge or judges reſpectively ſhall be thereby ſatisfied, that ſuch perſon is duly qualified to be admitted to act as an attorney, then, and not otherwiſe, the ſaid judge or judges of the ſaid courts reſpectively ſhall, and they are hereby authorized to adminiſter in open court, to ſuch perſon, the oath herein after directed to be taken by attornies, and, after ſuch oath taken, to cauſe him to be admitted an attorney in ſuch court, and his name to be inrolled as an attorney in ſuch court, without any fee or reward, other than one ſhilling for adminiſtring ſuch oath, which admiſſion ſhall be written on parchment in the *Engliſh* tongue, in a common legible hand, and ſigned by ſuch judge or judges reſpectively, whereon the lawful ſtamps ſhall be firſt impreſſed, and ſhall be delivered to the perſon ſo admitted."

After 1 Dec. 1730. none to act as ſolicitor before he has ſerved a clerkſhip, and been duly admitted.

Sect. 7. "And be it further enacted by the authority aforeſaid, That from and after the firſt day of *December* one thouſand ſeven hundred and thirty, no perſon, who ſhall not, before the ſaid firſt day of *December*, have been ſworn, admitted, and inrolled, purſuant to the directions of this act, ſhall be permitted to act as a ſolicitor, to ſue out any writ or proceſs, or to commence, carry on, ſolicit, or defend, any ſuit or proceedings in the name or names of any other perſon or perſons, in any of the courts of equity aforeſaid, unleſs ſuch perſon ſhall have been bound by contract in writing

writing to ſerve as a clerk for and during the ſpace of five years, to a ſolicitor duly and legally ſworn and admitted, as herein before is directed, in ſome or one of the courts of equity aforeſaid, and for and during the ſaid term of five years ſhall have continued in ſuch ſervice; and alſo unleſs ſuch perſon, after the expiration of the ſaid term of years ſhall be examined, ſworn, admitted, and inrolled, in the ſame manner, as perſons who ſhall be admitted ſolicitors in the courts of equity aforeſaid, are herein before required to be examined, ſworn, admitted, and inrolled."

Judges of the courts of equity to examine ſolicitors.

Sect. 8. "And be it further enacted by the authority aforeſaid, That the maſter of the rolls, two maſters of the chancery, the barons of the court of exchequer, the chancellor of the duchy of *Lancaſter*, and the judges of the ſaid other courts of equity for the time being reſpectively, or any one or more of them, ſhall, and they are hereby authorized and required, before he or they ſhall admit ſuch perſon to take the ſaid oath, to examine and inquire by ſuch ways and means, as he or they ſhall think proper, touching his fitneſs and capacity to act as a ſolicitor in courts of equity; and if the maſter of the rolls, two maſters of the chancery, the barons of the court of exchequer, the chancellor of the dutchy of *Lancaſter*, and ſuch judge or judges of the ſaid other courts of equity for the time being reſpectively, ſhall be thereby ſatisfied, that ſuch perſon is duly qualified to be admitted to act as a ſolicitor in ſuch court of equity, then and not otherwiſe, the ſaid maſter of the rolls, two maſters of the chancery, the barons of the court of exchequer, the chancellor of the dutchy of *Lancaſter*, and the ſaid judges of the ſaid other courts of equity for the time being reſpectively, or any one or more of them, ſhall, and they are hereby authorized to adminiſter in open court, to ſuch perſon, the oath herein after directed to be taken by ſolicitors, and, after ſuch oath taken, to cauſe him to be admitted a ſolicitor in ſuch court of equity, and his name to be inrolled as a ſolicitor in ſuch court, without any fee or reward, other than one ſhilling for adminiſtring ſuch oath; which admiſſion ſhall be written on parchment in the *Engliſh* tongue, and in a common legible hand, and ſigned by the maſter of the rolls, two maſters of the chancery, the barons of the exchequer, the chancellor of the dutchy of *Lancaſter*, and the judges of the ſaid other courts of equity reſpectively, or ſuch of them who ſhall admit ſuch perſon to be a ſolicitor, whereon a treble forty ſhillings ſtamp ſhall be firſt impreſſed, and ſhall be delivered to the perſon ſo admitted."

Sect. 9. "Provided, that this act ſhall not exclude perſons from being admitted, who have *before* 25 *March*, 1729, been bound for four years."

Attornies or ſolicitors, with conſent of an attorney of another court, may ſue out writs, &c. in ſuch court.

Sect. 10. "Provided alſo, and it is hereby further enacted, That it may be lawful, from and after the ſaid firſt day of *December* one thouſand ſeven hundred and thirty, for any perſon, who ſhall be ſworn, admitted and inrolled to be an attorney in any of the ſaid courts of *King's Bench*, *Common Pleas Exchequer*, courts of great ſeſſions, counties palatine of *Cheſter*, *Lancaſter*, and *Durham*, or who ſhall be ſworn, admitted, and inrolled to be a ſolicitor in the ſaid court of *Chancery*, court of equity in the exchequer chamber, court of the dutchy chamber of *Lancaſter* at *Weſtminſter*, courts of equity of the counties palatine of *Cheſter*, *Lancaſter*, and *Durham*, and of the

the great ſeſſions in *Wales*, or any of them, as herein before is directed, by and with the conſent and permiſſion of any attorney in any of the ſaid other courts of record at *Weſtminſter*, courts of the counties palatine of *Cheſter*, *Lancaſter* and *Durham*, courts of exchequer at *Cheſter*, and courts of the great ſeſſions in *Wales*, ſuch conſent being in writing ſigned by ſuch attorney, and in the name of ſuch attorney, to ſue out any writ or proceſs, or to commence, carry on, proſecute, or defend any action or actions, or any other proceedings in ſuch court, notwithſtanding ſuch perſon is not ſworn, or admitted to be an attorney of ſuch court; any law or ſtatute to the contrary notwithſtanding.

Judges not to ſwear a greater number of attornies than formerly allowed.

Sect. 11. " Provided likewiſe, and it is hereby further enacted and declared, That nothing in this act contained ſhall extend either to require or authorize any judge or judges of any court of record to ſwear, admit, or inroll, any more or greater number of perſons to be attornies of ſuch court, than by the ancient uſage and cuſtom of ſuch court hath been heretofore allowed.

Clerks on the death of their maſters, &c. may be turned over.

Sect. 12. " Provided alſo, and it is hereby further enacted, That if any attorney or ſolicitor, with and to whom any perſon hath been or ſhall be bound by contract in writing, as aforeſaid, to ſerve as a clerk for the term of five years, or four years reſpectively, ſhall happen to die before the expiration of the ſaid five years, or four years, or if ſuch contract ſhall, by mutual conſent of the parties, be vacated, or in caſe ſuch clerk be legally diſcharged by any rule or order of the court, wherein ſuch attorney or ſolicitor ſhall practiſe, before the expiration of the ſaid five years, or four years, then, and in any of the ſaid caſes, if ſuch clerk ſhall, by contract in writing, be obliged to ſerve, and ſhall accordingly ſerve as a clerk to any other attorney or ſolicitor reſpectively, who ſhall be ſworn, admitted, and inrolled, as before directed, during the reſidue of the ſaid term of five years, or four years, reſpectively, then ſuch ſervice ſhall be deemed and taken to be as good and effectual, as if ſuch clerk had continued to ſerve as a clerk for the term of five years, or four years, to the ſame perſon, to whom he was originally bound by contract in writing, as aforeſaid.

Attornies before admiſſion to take the following oath.

Sect. 13. " And it is hereby further enacted by the authority aforeſaid, That every perſon who ſhall, purſuant to this act, be admitted and inrolled to be an attorney in the ſaid courts of *King's Bench*, *Common Pleas*, *Exchequer*, great ſeſſions in *Wales*, counties palatine of *Cheſter Lancaſter*, and *Durham*, or any inferior courts of record, wherein attornies have been accuſtomably admitted, and ſworn, ſhall, before he is admitted and inrolled, as aforeſaid, take and ſubſcribe the oath following, inſtead of the oath heretofore uſually taken by the attornies of ſuch courts reſpectively.

I A. B. *do ſwear, That I will truly and honeſtly demean my ſelf in the practice of an attorney, according to the beſt of my knowledge and ability.*

So help me God.

Sect.

Sect. 14. " And it is hereby further enacted by the authority aforesaid, That every person who shall, pursuant to this act, be admitted and inrolled to be a solicitor in the said high court of chancery, or in any of the other courts of equity aforesaid, shall, before he shall be so admitted and inrolled, take and subscribe the oath following; *viz.* Solicitors to take the oath following.

I A. B. *do swear, that I will truly and honestly demean my self in the practice of a solicitor, according to the best of my knowledge and ability.*

So help me God.

Sect. 15. " And be it further enacted by the authority aforesaid, That from and after the first day of *July* in the year of our Lord one thousand seven hundred and twenty-nine, no attorney or solicitor shall have more than two clerks at one and the same time, who shall become bound by contract in writting as aforesaid, after the said first day of *July*, to serve him as clerks. No attorney to have more than two clerks at one time.

Sect. 16. " And it is hereby further enacted and declared, That it shall and may be lawful to and for the several prothonotaries of the court of common pleas at *Westminster*, and the secondary of the court of *King's Bench*, and the several prothontaries of the respective courts of the counties palatine of *Chester*, *Lancaster*, and *Durham*, and the respective courts of great sessions in *Wales*, to have three clerks at one and the same time, and no more; and that such respective clerks, having served a clerkship to any of the said prothonotaries, or secondary, for any term not less than five years, may, after the expiration of such term of five years, be examined, admitted, and inrolled, to be an attorney of any of the courts of law aforesaid, and for the same fee, and in the same manner, as any other person may be admitted and inrolled, who shall serve a clerkship to any sworn attorney for the space of five years, in case the judge or judges of the court, before whom such clerk shall be examined, be upon such examination satisfied, that he is duly qualified to be admitted an attorney of such court; any thing in this act contained to the contrary notwithstanding." Prothonotaries or secondary of Com. Pleas, &c. to have three clerks.

Sect. 17. " And it is hereby also further enacted by the authority aforesaid, That from and after the said first day of *December* one thousand seven hundred and thirty, if any person, who shall be a sworn attorney of any of the courts of law aforesaid, shall knowingly and willingly permit or suffer any other person or persons to sue out any writ or process, or to commence, prosecute, follow, or defend any action or actions, or other proceedings in his name, not being a sworn attorney of one of the said other courts of law, or a sworn solicitor of the said court of chancery, or of some or one of the courts of equity aforesaid, and shall be thereof lawfully convicted, every person so convicted shall, from the time of such conviction, be disabled and made incapable to act as an attorney in any of the courts of law aforesaid, and the admittance of such person to be an attorney of any of the said courts of law shall from thenceforth cease and be void. After 1 Decem. 1730. sworn attorneys, permitting those that are not to issue out writs, disabled from practice.

After 1 June 1729. attorneys and ſolicitors to be inrolled in the proper courts.

Sect. 18. " And be it enacted by the authority aforeſaid, That from and after the firſt day of *June* one thouſand ſeven hundred and twenty-nine, the chief clerk of the court of *King's Bench*, or his deputy, the clerk of the warrants in the court of common pleas, or his deputy, the prothonotaries of the ſaid reſpective counties palatine of *Lancaſter*, *Cheſter*, and *Durham*, and of the great ſeſſions in *Wales*, or their reſpective deputies, and ſuch officers of the ſaid inferior courts of law, as the judge or judges of the ſaid inferior courts reſpectively ſhall for that purpoſe appoint, ſhall, and they are hereby reſpectively required from time to time, without fee or reward, to inroll the name of every perſon, who ſhall be admitted an attorney in the ſaid reſpective courts of law, purſuant to the directions in this act, and the time when admitted, in an alphabetical order, in rolls or books to be provided and kept for that purpoſe in the ſaid ſeveral and reſpective offices; and alſo that the ſenior clerk of the petty bag office in the court of chancery, or his deputy, the king's remembrancer of the court of exchequer, or his deputy, the chief clerk of the court of the dutchy chamber of *Lancaſter*, or his deputy, the regiſters of the reſpective courts of equity in the ſaid counties palatine, and of the great ſeſſions of *Wales*, or their reſpective deputies, and ſuch officers of the inferior courts of equity, as the judge or judges of ſuch inferior courts reſpectively ſhall for that purpoſe appoint, ſhall, and they are hereby reſpectively required from time to time, without fee or reward, to enroll the name of every perſon who ſhall be admitted a ſolicitor in the ſaid reſpective courts of equity, purſuant to the directions in this act, and the time when admitted, in an alphabetical order, in rolls or books to be kept for that purpoſe in the ſaid reſpective offices in the ſaid courts of equity; to which rolls or books in the ſaid courts of law and equity reſpectively all perſons ſhall and may have free acceſs without fee or reward.

Attorneys to be admitted without ſtamp, if ſworn before 1 June 1729.

Sect. 19. " Provided always, and it is hereby enacted, That the admiſſion of any attorney in any of the courts aforeſaid, purſuant to the directions in this act, ſhall and may be written on parchment without any ſtamp impreſſed thereupon, in caſe he hath at any time, on or before the firſt day of *June* one thouſand ſeven hundred and twenty-nine, been ſworn and admitted an attorney of any of the ſaid courts.

A ſworn attorney may be admitted a ſolicitor.

Sect. 20. " Provided alſo, and it is hereby further enacted, That from and after the firſt day of *December* one thouſand ſeven hundred and thirty, any perſon, who ſhall be ſworn, admitted and inrolled to be an attorney, in any of the ſaid courts of *King's Bench*, *Common Pleas*, *Exchequer*, counties palatine of *Cheſter*, *Lancaſter*, and *Durham*, and great ſeſſions in *Wales*, as herein before directed, may be ſworn, admitted, and inrolled to be a ſolicitor in all or any of the courts of equity aforeſaid, without any fee for the oath, or any ſtamp to be impreſſed on the parchment whereon ſuch admiſſion ſhall be written, if the maſter of the rolls, two maſters of the chancery, the barons of the court of exchequer, the chancellor of the dutchy of *Lancaſter*, and the judges of the ſaid other courts of equity for the time being, or any of them reſpectively, ſhall, upon examining ſuch attorney touching his fitneſs

fitneſs and capacity to act as a ſolicitor in courts of equity, be ſatisfied that ſuch attorney is duly qualified to be ſo admitted.

A ſworn ſolicitor in one court of equity, may be admitted into any other court.

Sect. 21. "Provided alſo, and it is hereby further enacted, That from and after the firſt day of *December* one thouſand ſeven hundred and thirty, any perſon, who ſhall be ſworn, admitted, and inrolled to be a ſolicitor in any of the ſaid courts of chancery, exchequer, dutchy of *Lancaſter*, counties palatine of *Cheſter*, *Lancaſter*, and *Durham*, and great ſeſſions in *Wales*, as herein before directed, ſhall and may be ſworn, admitted, and inrolled to be a ſolicitor in all or any of the ſaid other courts of equity, or in any inferior court of equity, without any fee for the oath, or any ſtamps to be impreſſed on the parchment whereon ſuch admiſſion ſhall be written, in caſe the maſter of the rolls, two maſters of the chancery, the barons of the court of exchequer, the chancellor of the dutchy of *Lancaſter*, and the judges of the ſaid other courts of equity for the time being, or any of them reſpectively, ſhall, upon examining ſuch perſon touching his fitneſs and capacity to act as a ſolicitor in courts of equity, be ſatisfied that ſuch perſon is duly qualified to be ſo admitted.

The name of the attorney to be written on every writ, &c.

Sect. 22. "And be it further enacted by the authority aforeſaid, That from and after the firſt day of *July* one thouſand ſeven hundred and twenty-nine, every writ and proceſs for arreſting the body, and every writ of execution, or ſome label annexed to ſuch writ, or proceſs, and every warrant, that ſhall be made out upon any ſuch writ, proceſs, or execution, ſhall, before the ſervice or execution thereof, be ſubſcribed or indorſed with the name of the attorney, clerk in court, or ſolicitor, written in a common legible hand, by whom ſuch writ, proceſs, execution or warrant reſpectively ſhall be ſued forth; and where ſuch attorney, clerk in court, or ſolicitor, ſhall not be the perſon immediately retained or imployed by the plaintiff, in the action or ſuit, then alſo with the name of the attorney or ſolicitor ſo immediately retained or imployed, to be ſubſcribed, or, indorſed and written in like manner; and that every copy of any writ or proceſs, that ſhall be ſerved upon any defendant, ſhall, before the ſervice thereof, be in like manner ſubſcribed, or indorſed, with the name of the attorney or ſolicitor, who ſhall be immediately retained or imployed by the plaintiff in ſuch writ or proceſs.

Attorney, &c. not to commence an action for fees till one month after the delivery of their bills.

Sect. 23. "And be it further enacted by the authority aforeſaid, That from and after the firſt day of *July* one thouſand ſeven hundred and twenty-nine, no attorney or ſolicitor of any of the courts aforeſaid, ſhall commence or maintain any action or ſuit for the recovery of any fees, charges, or diſburſements, at law or in equity, until the expiration of one month, or more, after ſuch attorney or ſolicitor reſpectively ſhall have delivered unto the party or parties to be charged therewith, or left for him, her, or them, at his, her, or their dwelling-houſe, or laſt place of abode, a bill of ſuch fees, charges, and diſburſements, written in a common legible hand, and in the *Engliſh* tongue (except law terms, and names of writs) and in words at length (except times and ſums) which bill ſhall be ſubſcribed with the proper hand of ſuch attorney or ſolicitor reſpectively; and upon application of the party or parties chargeable by ſuch bill, or of any other

perſon in that behalf authorized, unto the ſaid lord high chancellor, or the maſter of the rolls, or unto any of the courts aforeſaid, or unto a judge, or baron of any of the ſaid courts reſpectively, in which the buſineſs contained in ſuch bill, or the greateſt part thereof, in amount or value, ſhall have been tranſacted; and upon the ſubmiſſion of the ſaid party or parties, or ſuch other perſon authorized as aforeſaid, to pay the whole ſum, that, upon taxation of the ſaid bill, ſhall appear to be due to the ſaid attorney or ſolicitor reſpectively, it ſhall and may be lawful for the ſaid lord high chancellor, the ſaid maſter of the rolls, or for any of the courts aforeſaid, or for any judge or baron of any of the ſaid courts reſpectively, and they are hereby required to refer the ſaid bill, and the ſaid attorney's or ſolicitor's demand thereupon (although no action or ſuit ſhall be then depending in ſuch court touching the ſame) to be taxed and ſettled by the proper officer of ſuch court, without any money being brought into the ſaid court for that purpoſe; and if the ſaid attorney, or ſolicitor, or the party or parties chargeable by ſuch bill reſpectively, having due notice, ſhall refuſe or neglect to attend ſuch taxation, the ſaid officer may proceed to tax the ſaid bill *ex parte* (pending which reference and taxation no action ſhall be commenced or proſecuted touching the ſaid demand), and, upon the taxation and ſettlemeht f ſuch bill and demand, the ſaid party or parties ſhall forthwith pay to the ſaid attorney or ſolicitor reſpectively, or to any perſon by him authorized to receive the ſame, that ſhall be preſent at the ſaid taxation, or otherwiſe unto ſuch other perſon or perſons, or in ſuch manner as the reſpective court aforeſaid ſhall direct, the whole ſum that ſhall be found to be or remain due thereon, which payment ſhall be a full diſcharge of the ſaid bill and demand; and in default thereof the ſaid party or parties ſhall be liable to an attachment or proceſs of contempt, or to ſuch other proceedings, at the election of the ſaid attorney or ſolicitor, as ſuch party or parties was or were before liable unto; and if, upon the ſaid taxation and ſettlement, it ſhall be found that ſuch attorney or ſolicitor ſhall happen to have been overpaid, then in ſuch caſe the ſaid attorney or ſolicitor reſpectively ſhall forthwith refund and pay unto the party or parties intitled thereunto, or to any perſon by him, her, or them authorized to receive the ſame, if preſent at the ſettling thereof, or otherwiſe unto ſuch other perſon or perſons, in ſuch manner as the reſpective court aforeſaid ſhall direct, all ſuch money as the ſaid officer ſhall certify to have been ſo overpaid; and in default thereof the ſaid attorney or ſolicitor reſpectively ſhall in like manner be liable to an attachment, or proceſs of contempt, or to ſuch other proceedings, at the election of the ſaid party or parties, as he would have been ſubject unto, if this act had not been made; and the ſaid reſpective courts are hereby authorized to award the coſts of ſuch taxations to be paid by the parties, according to the event of the taxation of the bill, (that is to ſay) if the bill taxed be leſs by a ſixth part than the bill delivered, then the attorney or ſolicitor is to pay the coſts of the taxation; but if it ſhall not be leſs, the court in their diſcretion ſhall charge the attorney or client, in regard to the reaſonableneſs or unreaſonableneſs of ſuch bills.

Judges, &c to refer bills to be taxed, without money being brought into court, &c.

Sect.

Sect. 24. "And be it further enacted, That from and after the firſt day of *December* one thouſand ſeven hundred and thirty, in caſe any perſon ſhall, in his own name, or in the name of any other perſon, ſue out any writ or proceſs, or commence, proſecute or defend any action or ſuit, or any proceedings, in any of the courts of law or equity aforeſaid, as an attorney or ſolicitor, for or in expectation of any gain, fee or reward, without being admitted and inrolled as aforeſaid, every ſuch perſon, for every ſuch offence, ſhall forfeit and pay fifty pounds to the uſe of ſuch perſon, who ſhall proſecute him for the ſaid offence, and is hereby made incapable to maintain or proſecute any action or ſuit in any court of law or equity, for any fee, reward, or diſburſements, on account of proſecuting, carrying on, or defending any ſuch action, ſuit, or proceeding. Attorney &c. in their own name ſuing out any writ, &c. not inrolled, forfeit 50 l.

Sect. 25. "And be it further enacted by the authority aforeſaid, That the penalties and forfeitures, incurred by any perſon offending againſt this act, may be recovered by action of debt, bill, plaint, or information, in any of his majeſty's courts of record at *Weſtminſter*, or in any of the courts of record of and for the counties palatine of *Cheſter*, *Lancaſter*, and *Durham*, or in any of the courts of great ſeſſions in *Wales*, for offences committed within the juriſdictions of ſuch courts reſpectively, or at the aſſizes, or general quarter ſeſſions of the peace of the county, riding, or diviſion, where ſuch offence ſhall be committed, by any perſon who ſhall ſue for the ſame within twelve months after ſuch offence committed, together with treble coſts of ſuit, wherein no eſſoign, protection, or wager of law ſhall be allowed, or any more than one imparlance; and that no ſuch bill, plaint, ſuit, or information, nor any proceedings thereupon, ſhall be removed before judgment, or ſtayed by any writ of *certiorari*, *habeas corpus*, or other writ whatſoever. Forfeitures how to be recovered.

Sect. 26. "Provided nevertheleſs, and it is hereby further enacted by the authority aforeſaid, That nothing in this act contained ſhall extend, or be conſtrued to extend, to the examination, ſwearing, admiſſion, or inrollment of the ſix clerks of the court of *Chancery*, or the ſworn clerks in their office, or the waiting clerks belonging to the ſaid ſix clerks, or the curſitors of the ſaid court, or of the clerks of the petty bag office, or of the clerks of the king's coroner, and attorney in the court of *King's Bench*, or of the filazers of the ſame court, or of the filazers of the court of *Common Pleas* at *Weſtminſter*, or of the attorneys of the court of the dutchy chamber of *Lancaſter*, or of the attorneys of the court of *Exchequer* at *Cheſter*, or of the attorneys of the courts of the lord mayor and ſheriffs of *London* reſpectively for the time being; but that the ſaid clerk, filazers, and attorneys reſpectively, ſhall and may be examined, ſworn, admitted, inrolled, and practiſe, in their reſpective courts and offices aforeſaid, in like manner as they might have been, or done, before the making this act. To what clerks, &c. the act doth not extend.

Sect. 27. "Provided alſo, and it is hereby further declared and enacted by the authority aforeſaid, That nothing in this act contained ſhall extend, or be conſtrued to extend to the examination, ſwearing, admiſſion, or inrollment of the attorneys or clerks of the office of the king's remembrancer, treaſurer's remembrancer, pipe, or office of pleas in the court of *Exchequer* at *Weſtminſter*, for the time being; but that the ſaid attorneys and clerks of the ſaid re- The attorneys and clerks in the exchequer, herein mentioned, may act as heretofore;

ſpec-

ſpective offices ſhall and may be approved, ſworn, admitted, and practiſe, in the ſaid court of *Exchequer*, or may practiſe in any other of the courts of record before mentioned, in the name, and with the conſent of ſome ſworn attorney of ſuch court; ſuch conſent to be in writing, and ſigned by ſuch attorney, as aforeſaid, in like manner as they have uſually been, and might have done, before the making of this act; any thing herein contained to the contrary in any wiſe notwithſtanding; and that it ſhall and may be lawful, from and after the ſaid firſt day of *December* one thouſand ſeven hundred and thirty, for any perſon, who ſhall be ſworn, admitted, and inrolled an attorney or ſolicitor in any of the ſeveral courts before mentioned, according to the direction of this act, to practiſe and ſolicit in the ſaid reſpective offices, in the ſame manner as heretofore has been done; any thing herein before contained, or any law or ſtatute to the contrary notwithſtanding.

as alſo the ſolicitors of the Treaſury, &c.

Sect. 28. "Provided alſo, that this act, or any thing herein contained, ſhall not extend, or be conſtrued to extend, to the examination, ſwearing, admiſſion, or inrollment, of perſons to be ſolicitors of the treaſury, cuſtoms, exciſe, poſt-office, ſalt or ſtamp duties, or of any other branches of his majeſty's revenue for the time being, or of the ſolicitor of the city of *London* for the time being, or of the aſſiſtant to the council for the affairs of the admiralty and navy; but that ſuch ſolicitors and aſſiſtant may be examined, ſworn, admitted, and practiſe, in their reſpective offices only, as they might have done before the making this act.

Continuation of the act.

Sect. 29. "Provided always, and be it enacted by the authority aforeſaid, That this act ſhall continue in force from the ſaid firſt day of *June* one thouſand ſeven hundred and twenty-nine, for the term of nine years, and from thence unto the end of the then next ſeſſion of parliament, and no longer." [Continued by 12 *Geo.* 2. *c.* 13. and amended and continued by 22 *Geo.* 2. *c.* 46. until 1 *June* 1757, and to the end of the next ſeſſion.——Made perpetual by 30 *Geo.* 2. *c.* 19. *ſect.* 75.]

5 Geo. 2. c. 18.

Stat. 5 *Geo.* 2. *c.* 18. [*A. D.* 1732. *intituled*,] "An act for the further qualification of juſtices of the peace."

No perſon to be juſtices who have not 100*l.* a year clear of incumbrances.

Sect. 1. "Whereas the conſtituting perſons of mean eſtates to be juſtices of the peace may be highly prejudicial to the public welfare, Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the twenty-fifth day of *March* one thouſand ſeven hundred and thirty-three, no perſon ſhall be capable to be a juſtice of the peace, or to act as a juſtice of the peace, for any county within that part of *Great Britain* called *England*, or the principality of *Wales*, who ſhall not have an eſtate of freehold or copyhold to and for his own uſe and benefit, in poſſeſſion for life, or for ſome greater eſtate, either in law or equity, or an eſtate for years, determinable upon one or more life or lives, or for a certain term originally created for one and twenty years, or more, in lands, tenements, or hereditaments, lying in that part of *Great Britain* called *England*,

and, or principality of *Wales*, of the clear yearly value of one hundred pounds, over and above what will ſatisfy and diſcharge all incumbrances that may affect the ſame.

Attornies, ſolicitors, and proctors incapacitated.

Sect. 2. " And be it further enacted by the authority aforeſaid, That no attorney, ſolicitor, or proctor, in any court whatſoever, ſhall, from and after the ſaid twenty-fifth day of *March* one thouſand ſeven hundred and thirty-three, be capable to continue or be a juſtice of the peace, within any county for that part of *Great Britain* called *England*, or the principality of *Wales*, during ſuch time as he ſhall continue in the buſineſs and practice of an attorney, ſolicitor, or proctor.

Perſons acting as juſtices, not ſo qualified, to forfeit 100*l.*

Sect. 3. " And be it further enacted by the authority aforeſaid, That if any perſon, who ſhall not be qualified according to the directions of this act, ſhall, after the ſaid twenty-fifth day of *March* one thouſand ſeven hundred and thirty-three, accept or take upon himſelf the office of a juſtice of the peace, or ſhall do any act as ſuch, the perſon ſo offending ſhall, for every ſuch offence, forfeit and pay the ſum of one hundred pounds; one moiety whereof ſhall be to the king's majeſty, his heirs, and ſucceſſors, and the other moiety to ſuch perſon or perſons as will ſue for the ſame by action of debt, bill, plaint, or information, in any of his majeſty's courts of record at *Weſtminſter*, in which no eſſoign, protection, wager of law, or more than one imparlance ſhall be allowed.

Not to extend to cities which are counties, or other places having juſtices by charter,

Sect. 4. " Provided always, that this act, or any thing herein contained, ſhall not extend, or be conſtrued to extend, to any city or town, being a county of it ſelf, or to any other city, town, cinque port, or liberty, having juſtices of the peace within their reſpective limits and precincts by charter, commiſſion, or otherwiſe; but that in every ſuch city, town, liberty, and place, ſuch perſons may be capable to be juſtices of the peace, and in ſuch manner only, as they might have been, if this act had never been made; any thing herein before contained to the contrary thereof in any wiſe notwithſtanding.

nor to the eldeſt ſons of peers, or of knights of ſhires,

Sect. 5. " Provided always, that nothing in this act contained ſhall extend to incapacitate any peer or lord of parliament, or the eldeſt ſon or heir apparent of any peer or lord of parliament, or of any perſon qualified to ſerve as knight of a ſhire by an act, intituled, an act to ſecure the freedom of parliaments, by the further qualifying members to ſit in the houſe of commons, to be a juſtice of the peace for any county, or to act as ſuch; any thing herein contained to the contrary thereof in any wiſe notwithſtanding.

9 Annæ, c. 5.

nor to the board of Green Cloth,

Sect. 6. " Provided alſo, that nothing in this act contained ſhall extend, or be conſtrued to extend to incapacitate or exclude the officers of the board of green cloth from being juſtices of the peace within the virge of his majeſty's palaces, or to incapacitate or exclude the commiſſioners and principal officers of the navy, or the two under ſecretaries in each of the offices of principal ſecretary of ſtate, from being juſtices of the peace in and for ſuch maritime counties and places, where they uſually have been juſtices of the peace; any thing herein contained to the contrary in any wiſe notwithſtanding.

or principal officers of the navy,

Sect.

nor to heads of colleges in either univerſity.

Sect. 7. "Provided always, that this act, nor any thing herein contained, ſhall extend, or be conſtrued to extend to any of the heads of colleges or halls in either of the two univerſities of *Oxford* and *Cambridge*, but that they may be made juſtices of the peace of and in the ſeveral counties of *Oxford*, *Berks*, and *Cambridge*, and the cities and towns within the ſame, and execute the office thereof as fully and freely in all reſpects, as heretofore they have lawfully uſed to execute the ſame, as if this act had never been made; any thing herein before contained to the contrary notwithſtanding."

6 Geo. 2. c. 27.

Stat. 6 *Geo.* 2. *c.* 27. [*A. D.* 1733. *intituled*,] "An act to explain and amend an act made in the ſecond year of his majeſty's reign, intituled, *an act for the better regulation of attornies and ſolicitors.*"

Sect. 1. *Perſons qualified as mentioned in the act may, on or before the laſt day of* Michaelmas *term* 1733, *be ſworn, admitted and inrolled attornies in the ſeveral courts.*

Sect. 2. "And be it further enacted by the authority aforeſaid, That any perſon who hath been, by virtue of the ſaid act, [*viz.* 2 *Geo.* 2. *c.* 23.] admitted an attorney in any of his majeſty's courts of record at *Weſtminſter*, ſhall and may be capable of being admitted to practiſe as an attorney in any inferior court of record, provided ſuch perſon be in all other reſpects capable and qualified to be admitted an attorney according to the uſage and cuſtom of ſuch inferior court."

12 Geo. 2. c. 13.

Stat. 12 *Geo.* 2. *c.* 13. [*A. D.* 1739.] Made among other purpoſes, "for explaining, and amending the act made in the 2 *Geo.* 2. for the better regulation of attornies and ſolicitors."

The not indorſing the attorney's name on warrants upon writs, not to vitiate the ſame.

Sect. 4. "And be it further enacted by the authority aforeſaid, That from and after the twenty-fourth day of *June* in the year of our Lord one thouſand ſeven hundred and thirty-nine, the not ſubſcribing or indorſing the name of the attorney's clerk in court, or ſolicitor, on any warrant that ſhall be made out upon any writ, proceſs or execution, ſhall not vitiate the ſame; but ſuch writ, proceſs, and execution, and all proceedings thereon, ſhall be as valid and effectual, notwithſtanding ſuch omiſſion, as if the ſaid recited act for regulating attornies and ſolicitors had not been made; provided the writ whereon ſuch warrant is made out be regularly ſubſcribed or indorſed according to the ſaid act; and every ſheriff or ſheriffs, or other officer, who ſhall make out any warrant upon any writ, proceſs, or execution, and ſhall not ſubſcribe or indorſe the name of the attorney, clerk in court, or ſolicitor, who ſued out the ſame, ſhall forfeit the ſum of five pounds, to be aſſeſſed as a fine upon ſuch ſheriff or ſheriffs, or other officer, by the court out of which ſuch writ, proceſs, or execution ſhall iſſue; one moiety thereof to be paid to his majeſty, his heirs and ſucceſſors, and the other moiety to the perſon or perſons aggrieved by ſuch omiſſion.

Officers to indorſe the attornies names upon writs.

Sect.

Sect. 5. " And be it further enacted by the authority aforeſaid, That from and after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-nine, it ſhall and may be lawful to and for every attorney, clerk in court, and ſolicitor, to write his bill of fees, charges, and diſburſements, with ſuch abbreviations as are now commonly uſed in the *Engliſh* language; any thing in any former law to the contrary notwithſtanding. Attornies, &c. may uſe abbreviations in their bills.

Sect. 6. " And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and thirty-nine, the ſaid act of the ſecond year of his preſent majeſty, for the better regulation of attornies and ſolicitors, or any clauſe, matter, or thing therein contained, ſhall not extend to any bill of fees, charges, and diſburſements that are now, or ſhall hereafter become, due from any attorney or ſolicitor to any other attorney or ſolicitor, or clerk in court, but that every ſuch attorney, ſolicitor, or clerk in court, may uſe ſuch remedies for the recovery of his fees, charges, and diſburſements againſt ſuch other attorney or ſolicitor, as he might have done before the making of the ſaid act. Act 2 Geo. II. not to extend to any bill of fees between one ſolicitor and another.

Sect. 7. " And be it further enacted, That in caſe any perſon ſhall, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and thirty-nine, commence or defend any action, or ſue out any writ, proceſs, or ſummons, or carry on any proceedings in the court commonly called *The county court*, holden in any county in that part of *Great Britain* called *England*, who is not or ſhall not then be legally admitted an attorney or ſolicitor, according to the ſaid act made in the ſaid ſecond year of the reign of his preſent majeſty, that ſuch perſon ſhall for every ſuch offence forfeit the ſum of twenty pounds, to be recovered with coſts by any other perſon who ſhall ſue for the ſame, within twelve months next after ſuch offence ſhall be committed, in any of his majeſty's courts of record. Penalty on perſons unqualified acting in county courts.

Sect. 8. " And be it enacted by the authority aforeſaid, That any perſon being one of the people called Quakers, who may have ſerved, or ſhall hereafter ſerve, a clerkſhip with an attorney or ſolicitor, and ſhall be qualified as by the ſaid act before is required, ſhall, upon taking his ſolemn affirmation inſtead of the oaths thereby directed to be taken, before ſuch judges and others, who are hereby authorized and required to adminiſter the ſaid affirmation, be admitted and inrolled as an attorney or ſolicitor, as if he had taken the ſaid oaths; any thing in the ſaid act to the contrary notwithſtanding. Quakers to be inrolled upon their affirmation.

Sect. 9. " And be it further enacted by the authority aforeſaid, That from and after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-nine, no attorney or ſolicitor, who ſhall be a priſoner in any gaol or priſon, or within the limits, rules, or liberties of any gaol or priſon, ſhall during his confinement in any gaol or priſon, or within the limits, rules, or liberties of any gaol or priſon, in his own name, or in the name of any other attorney or ſolicitor, ſue out any writ or proceſs, or commence or proſecute any action or ſuit in any courts of law or equity; and that all proceedings in ſuch actions or ſuits ſhall be void and of none effect; and ſuch attorney or ſolicitor No attornies, &c. to commence ſuits, if priſoners. Penalty.

citor ſo commencing or proſecuting any action or ſuit as aforeſaid, ſhall be ſtruck off the roll, and incapacitated from acting as an attorney or ſolicitor for the future; and any attorney or ſolicitor permitting or impowering any ſuch attorney or ſolicitor as aforeſaid, to commence or proſecute any action or ſuit in his name, ſhall be ſtruck off the roll, and incapacitated from acting as an attorney or ſolicitor for the future.

Proviſo.

Sect. 10. "Provided nevertheleſs, and be it hereby further enacted by the authority aforeſaid, That nothing in this act contained ſhall extend, or be conſtrued to extend, to prevent any attorney or ſolicitor ſo confined as aforeſaid, from carrying on or tranſacting any ſuit or ſuits commenced before the confinement of ſuch attorney or ſolicitor as aforeſaid; any thing in this act contained to the contrary notwithſtanding."

Stat. 22 *Geo.* 2. *c.* 46. [*A. D.* 1749.] Made among other purpoſes, "for making further regulations with reſpect to attornies and ſolicitors."

Sect. 3. "And for the better preventing unqualified perſons from being admitted attornies and ſolicitors, and for rendering the ſaid act (*viz.* 2 *Geo.* 2. *c.* 23.) more effectual for the purpoſes thereby intended; Be it enacted by the authority aforeſaid, That every perſon who ſhall, from and after the firſt day of *July* one thouſand ſeven hundred and forty-nine, be bound by contract in writing to ſerve as a clerk to any attorney or ſolicitor, as by the ſaid act is directed, ſhall, within three months next after the date of every ſuch contract, cauſe an affidavit to be made and duly ſworn of the actual execution of every ſuch contract, by every ſuch attorney or ſolicitor, and the perſon ſo to be bound to ſerve as a clerk as aforeſaid; and in every ſuch affidavit ſhall be ſpecified the names of every ſuch attorney and ſolicitor, and of every ſuch perſon ſo bound, and their places of abode reſpectively, together with the day of the date of ſuch contract: and every affidavit ſhall be filed within the time aforeſaid, in the court where the attorney or ſolicitor, to whom every ſuch perſon reſpectively ſhall be bound as aforeſaid, hath been inrolled as an attorney or ſolicitor, with the reſpective officer or officers, or his or their reſpective deputy or deputies, in the reſpective courts herein after-mentioned, who ſhall make and ſign a memorandum or mark of the day of filing every ſuch affidavit at the back or at the bottom thereof.

Perſons bound to ſerve as clerks to attornies, to cauſe affidavit to be made within three months of the execution of ſuch contracts, &c.

Affidavit to be filed.

Sect. 4. "And be it further enacted, That no perſon, who ſhall after the ſaid firſt day of *July* become bound as aforeſaid, ſhall be admitted or inrolled an attorney or ſolicitor in any court in the ſaid act mentioned, before ſuch affidavit, ſo marked by the proper officer as aforeſaid, ſhall be produced and openly read in ſuch court, where ſuch perſon ſhall be admitted and inrolled an attorney or ſolicitor.

None to be admitted before ſuch affidavit be produced.

Sect. 5. "And it is hereby enacted and declared, That the ſeveral perſons following ſhall be deemed and taken to be the proper officers for filing ſuch affidavits in the reſpective courts herein after-mentioned (that is to ſay) in the high court of *Chancery*, the ſenior clerk of the petty bag office, or his deputy; in the court of *King's Bench*, the chief clerk of that court, or his deputy; in the court of *Common Pleas*, the clerk of the warrants of that

Officers who are to file ſuch affidavits.

that court, or his deputy; in the court of *Exchequer*, the king's remembrancer of that court, or his deputy; in the court of the dutchy chamber of *Lancaſter* at *Weſtminſter*, the chief clerk of that court, or his deputy; and in the ſeveral counties palatine of *Cheſter*, *Lancaſter*, and *Durham*, the reſpective prothonotaries of the ſaid counties palatine, and their reſpective deputies; and in the ſeveral courts of the great ſeſſions of *Wales*, the reſpective prothonotaries of the ſaid courts, and their reſpective deputies.

Book to be kept for entering the names and places of abode of every ſuch attorney, and clerk, &c.

Sect. 6. "And be it further enacted, That every ſuch officer or officers, or their reſpective deputy or deputies, filing ſuch affidavit as aforeſaid, ſhall keep a book, wherein ſhall be entered the ſubſtance of ſuch affidavit, ſpecifying the names and places of abode of every ſuch attorney or ſolicitor, and clerk or perſon bound as aforeſaid, and of the perſon making ſuch affidavit, with the date of the articles or contract in ſuch affidavit to be mentioned, and the days of ſwearing and filing every ſuch affidavit reſpectively; and every ſuch officer or officers, or his or their deputy or deputies, ſhall be at liberty to take, at the time of filing every ſuch affidavit, the ſum of two ſhillings and ſix-pence, and no more, as a recompence for his trouble in filing ſuch affidavits, and preparing and keeping ſuch books as aforeſaid, and which ſaid books ſhall and may be ſearched in office hours, by any perſon or perſons whatſoever, without fee or reward.

Fees for filing the affidavits.

No attorney to take, &c. a clerk, after diſcontinuing buſineſs.

Sect. 7. "And be it further enacted, That, from and after the ſaid firſt day of *July*, no attorney or ſolicitor ſhall take, have, or retain any clerk, who ſhall become bound by contract in writing as aforeſaid, after ſuch attorney or ſolicitor ſhall have diſcontinued or left off, or during ſuch time as he ſhall not actually practiſe as, or carry on the buſineſs of an attorney or ſolicitor.

Clerks to be employed in their proper buſineſs during the time of their contract.

Sect. 8. "And be it further enacted, That every perſon who ſhall, from and after the ſaid firſt day of *July*, become bound, by contract in writing, to ſerve any attorney or ſolicitor, as by the ſaid act is directed, ſhall, during the whole time and term of ſervice, to be ſpecified in ſuch contract, continue and be actually employed by ſuch attorney or ſolicitor, or his or their agent or agents, in the proper buſineſs, practice, or employment of an attorney or ſolicitor.

Affidavit of the execution of ſecond contracts by ſuch clerks, the ſervice of 5 years to be deemed effectual.

Sect. 9. "Provided always, and it is hereby enacted, If any ſuch attorney or ſolicitor, to or with whom any ſuch perſon ſhall be ſo bound, ſhall happen to die before the expiration of ſuch term, or ſhall diſcontinue or leave off ſuch his practice as aforeſaid, or if ſuch contract ſhall by mutual conſent of the parties be cancelled, or in caſe ſuch clerk ſhall be legally diſcharged by any rule or order of the court, wherein ſuch attorney or ſolicitor ſhall practiſe, before the expiration of ſuch term, and ſuch clerk ſhall in any of the ſaid caſes be bound by another contract, or other contracts, in writing to ſerve, and ſhall accordingly ſerve in manner herein before-mentioned, as clerk to any other ſuch practiſing attorney or attornies, ſolicitor or ſolicitors as aforeſaid reſpectively, during the reſidue of the ſaid term of five years; then ſuch ſervice ſhall be deemed and taken to be as good, effectual, and available, as if ſuch clerk had continued to

ſerve as a clerk for the ſaid term, to the ſame perſon to whom he was originally bound, ſo as an affidavit be duly made and filed of the execution of ſuch ſecond or other contract or contracts, within the time, and in like manner, as is before directed concerning ſuch original contract.

Clerks, before admitted, to make affidavit of having ſerved 5 years.

Sect. 10. "And be it further enacted, that every perſon who, from and after the ſaid firſt day of *July*, ſhall become bound as a clerk as aforeſaid, ſhall, before he be admitted an attorney or ſolicitor according to the ſaid act, cauſe an affidavit of himſelf, or ſuch attorney or ſolicitor, to whom he was bound as aforeſaid, to be duly made and filed with the proper officer herein before for that purpoſe appointed, that he hath actually and really ſerved and been employed by ſuch practiſing attorney or attornies, ſolicitor or ſolicitors, to whom he was bound as aforeſaid, or his or their agent or agents, during the ſaid whole term of five years, according to the true intent and meaning of this act.

Sect. 11. "And whereas divers perſons, who are not examined, ſworn, or admitted to act as attornies or ſolicitors in any court of law or equity, do, in conjunction with, or by the aſſiſtance or connivance of certain ſworn attornies and ſolicitors, and by various ſubtle contrivances, intrude themſelves into, and act and practiſe in the office and buſineſs of attornies and ſolicitors, to the great prejudice and loſs of many of his majeſty's ſubjects, and the ſcandal of the profeſſion of the law; Be it therefore enacted, That from and after the twenty-ninth day of *September*, which ſhall be in the year of our lord one thouſand ſeven hundred and forty-nine, if any ſworn attorney or ſolicitor ſhall act as agent for any perſon or perſons, not duly qualified to act as an attorney or ſolicitor as aforeſaid, or permit or ſuffer his name to be any ways made uſe of upon the account, or for the profit of any unqualified perſon or perſons, or ſend any proceſs to ſuch unqualified perſon or perſons, thereby to enable him or them to appear, act, or practiſe in any reſpect as an attorney or ſolicitor, knowing him not to be duly qualified as aforeſaid, and complaint ſhall be made thereof in a ſummary way to the court from whence any ſuch proceſs did iſſue, and proof made thereof, upon oath, to the ſatisfaction of the court, that ſuch ſworn attorney or ſolicitor hath offended therein as aforeſaid; then, and in ſuch caſe, every ſuch attorney or ſolicitor ſo offending ſhall be ſtruck off the roll, and for ever after diſabled from practiſing as an attorney or ſolicitor; and in that caſe, and upon ſuch complaint and proof made as aforeſaid, it ſhall and may be lawful to and for the ſaid court to commit ſuch unqualified perſon, ſo acting or practiſing as aforeſaid, to the priſon of the ſaid court, for any time not exceeding one year.

Sworn attornies acting as agents for perſons not qualified, &c.

to be ſtruck off the roll,

and to be committed.

Sect. 12. "And whereas frequent delays, inconveniencies, and unneceſſary expences ariſe and happen, as well to pariſhes as private perſons, by the miſmanagement and unſkilfulneſs of perſons employed as ſolicitors or agents at the ſeſſions held for the ſeveral counties, ridings, diviſions, cities, towns corporate, and other places of this kingdom, who having never been regularly bred to the law, and being ignorant of the forms and operations thereof, offenders againſt the laws of the land have frequently eſcaped with impunity: For remedying therefore of theſe inconveniencies, Be

None to act as attornies at the

Be it enacted by the authority aforeſaid, That from and after the twenty-ninth day of *September*, which ſhall be in the year of our lord one thouſand ſeven hundred and forty-nine, no perſon whatſoever ſhall act as a ſolicitor, attorney, or agent, or ſue out any proceſs, at any general or quarter ſeſſions of the peace for any county, riding, diviſion, city, town corporate, or other place within this kingdom, either with reſpect to matters of a criminal or civil nature, unleſs ſuch perſon ſhall have been heretofore admitted an attorney of one of his majeſty's courts of record at *Weſtminſter*, and duly inrolled purſuant to an act made in the ſecond year of his preſent majeſty's reign (intituled, An act for the better regulation of attornies and ſolicitors), or unleſs ſuch perſon ſhall hereafter be admitted an attorney, and inrolled as aforeſaid by virtue of this act, or ſuch other law as ſhall be then in being, and unleſs ſuch perſon ſhall continue ſo entered upon the roll, at the time of ſuch his acting in the capacity aforeſaid; but all and every perſon or perſons reſpectively, who ſhall ſo act, not being admitted and inrolled as aforeſaid, ſhall be ſubject and liable to a penalty of fifty pounds; to be recovered by action of debt, bill, plaint, or information, in any of the courts of record at *Weſtminſter*, by any perſon or perſons who ſhall ſue for the ſame, within twelve months after the offence commited, with treble coſts of ſuit; and if any attorney or attornies ſhall permit and ſuffer any perſon or perſons whatſoever, not being admitted and inrolled as aforeſaid, to make uſe of his or their name or names reſpectively, in the courts of general or quarter ſeſſions aforeſaid, ſuch attorney or attornies reſpectively ſhall be ſubject and liable to a like penalty of fifty pounds, to be recovered in manner aforeſaid.

ſeſſions who were not at admitted according to 2 Geo. II. c. 23.

Penalty 50 l. with treble coſts.

Attornies ſuffering perſons not admitted to uſe their names, to forfeit 50 l. See 23 Geo. II. c. 26.

Sect. 13. Provided always, that nothing herein contained ſhall extend, or be conſtrued to extend, to deprive the attornies of the dutchy of *Lancaſter*, or of the courts of great ſeſſions in *Wales*, or of the counties palatine of *Cheſter*, *Lancaſter* and *Durham*, from acting within their reſpective juriſdictions.

Perſons exempted.

Sect. 14. " And, to the end that juſtice may be impartially adminiſtered in the ſeveral general or quarter ſeſſions of this kingdom, Be it further enacted by the authority aforeſaid, That no clerk of the peace, or his deputy, nor any under ſheriff, or his deputy, ſhall, from and after the ſaid twenty-ninth day of *September*, act as ſolicitor, attorney, or agent, or ſue out any proceſs, at any general or quarter ſeſſions of the peace to be held for ſuch county, riding, diviſion, city, town corporate, or other place within this kingdom, where he ſhall execute the office of clerk of the peace, or deputy clerk of the peace, under ſheriff, or deputy, on any pretence whatſoever; but if any clerk of the peace, or his deputy, or any under ſheriff, or his deputy, ſhall preſume to act as a ſolicitor, attorney, or agent as aforeſaid, ſuch clerk of the peace, or his deputy, under ſheriff, or his deputy reſpectively, ſhall be ſubject and liable to a like penalty of fifty pounds, to be recovered in manner aforeſaid.

No clerk of the peace, under ſheriff, &c. to act as attornies, &c. at quarter ſeſſions for the county, &c.

Penalty 50 l.

Sect.

Sect. 15. " And whereas ſeveral perſons have been bound by articles in writing to attornies of one of his majeſty's courts at *Weſtminſter*, to ſerve them as their clerks for the term of five years, which attornies have died before the expiration of the ſaid five years, and after their deaths ſuch perſons ſo bound have ſerved the remainder of the ſaid term with ſome other attornies of the ſaid courts, but have neglected to enter into articles with the ſaid other attornies for the remainder of the term of five years, and therefore doubts have ariſen, whether ſuch perſons could be admitted attornies of any of his majeſty's courts, by reaſon that ſuch ſervice was not ſtrictly in purſuance of the direction of the before-mentioned act; Be it therefore enacted and declared by the authority aforeſaid, That all ſuch perſons who ſhall have been ſo bound as aforeſaid for the term of five years to attornies of any of his majeſty's courts at *Weſtminſter*, which ſaid attornies ſhall have died before the determination of the ſaid term, if ſuch perſons ſhall afterwards, and before the twenty-fifth day of *March* one thouſand ſeven hundred and forty-nine, have ſerved the reſidue of the ſaid term of five years, with ſome other attornies of one of his majeſty's ſaid courts, though without entering into any new articles, ſuch perſons having ſo ſerved during the ſaid term of five years, ſhall and may be admitted attornies in any of his majeſty's courts at *Weſtminſter*; any thing in the ſaid act, or in this preſent act, contained to the contrary in any wiſe notwithſtanding.

Clerks, whoſe maſters have died, ſerving the reſidue of their times with others without freſh contracts, to be admitted.

Sect. 16. " And be it further enacted by the authority aforeſaid, That any perſon, who ſhall have been admitted a ſworn clerk in the office of the ſix clerks of the court of *Chancery*, or ſhall have been bound by contract in writing, to ſerve as a clerk for and during the ſpace of five years, to a ſworn clerk in the ſaid office, and for and during the ſaid term of five years ſhall have continued in ſuch ſervice, or ſhall have continued in ſuch ſervice for the ſpace of three years, or more, and ſhall have been admitted a waiting clerk, and acted as ſuch during the reſidue of the ſaid term of five years, may be examined, ſworn, and admitted and inrolled as a ſolicitor, in the ſame manner as ſolicitors in courts of equity are by the ſaid act required to be examined, ſworn, admitted, and inrolled; any thing in the ſaid act to the contrary notwithſtanding.

Perſons admitted ſworn clerks in the office of the ſix clerks, or bound for five years, &c. may be admitted ſolicitors.

Sect. 17. " Provided alſo, and it is hereby further enacted, That if any ſworn clerk in the ſaid ſix clerks office, with and to whom any perſon hath been, or ſhall be bound by contract in writing as aforeſaid, to ſerve as a clerk for the term of five years, ſhall happen to die before the expiration of the ſaid term of five years; or if ſuch contract ſhall, by mutual conſent of the parties, be vacated, or in caſe ſuch clerk be legally diſcharged by any rule or order of the ſaid court of *Chancery*, before the expiration of the ſaid term of five years; then, and in any of the ſaid caſes, if ſuch clerk ſhall by contract in writing be obliged to ſerve, and ſhall accordingly ſerve as a clerk to any other ſworn clerk in the ſaid ſix clerks office, or to any ſolicitor who ſhall be ſworn, admitted, and inrolled, purſuant to the ſaid act of the ſecond year of his preſent majeſty, during the reſidue of the ſaid term of five years, then ſuch ſervice ſhall be deemed and taken to be as good and effectual as if ſuch clerk had continued

Clerks, whoſe maſters have died, &c. entering into freſh contracts, and ſerving the reſidue of their time, the ſame to be effectual.

tinued to ſerve as a clerk for the term of five years to the ſame perſon to whom he was originally bound by contract in writing as aforeſaid.

Sect. 18. "Provided always, and it is hereby further enacted by the authority aforeſaid, That no ſworn clerk in the ſaid ſix clerks office ſhall have more than two clerks at one and the ſame time, including the clerk who ſhall be entered on the roll kept by the maſter of the rolls, or his ſecretary, for that purpoſe. No ſworn clerk to have more than two clerks.

Sect. 19. "Provided alſo, and it is hereby further declared and enacted by the authority aforeſaid, That nothing in this act contained ſhall extend or be conſtrued to extend to the taking or binding, examination, ſwearing, admiſſion, or inrollment of the attornies, or clerks of the offices of the king's remembrancer, treaſurer's remembrancer, pipe, or office of pleas in the court of *Exchequer* at *Weſtminſter* for the time being, but that the ſaid attornies, and clerks of the ſaid reſpective offices ſhall and may be taken, bound, approved, ſworn, admitted, and practiſe in the ſaid court of *Exchequer*, in like manner as they uſually have been, and might have done before the making of this act, and may practiſe in any of the ſaid courts of record before-mentioned, in the name, and with the conſent of ſome ſworn attorney of ſuch court, ſuch conſent being in writing, and ſigned by ſuch attorney as aforeſaid, in the manner as they have uſually been and might have done before the making of this act; any thing therein contained to the contrary notwithſtanding. Perſons exempted.

Stat. 23 *Geo.* 2. *c.* 26. [*A. D.* 1750.] *made, among other purpoſes,* "To amend an act made 2 *Geo.* 2. for better regulation of attornies and ſolicitors." 23 Geo. 2. c. 26.

Sect. 15. "And whereas by an act of parliament made and paſſed in the ſecond year of the reign of his preſent majeſty, (intituled, an act for the better regulation of attornies and ſolicitors) it was enacted, That from and after the firſt day of *December* one thouſand ſeven hundred and thirty, any perſon who ſhould be ſworn, admitted, and inrolled to be an attorney in any of his majeſty's courts of *King's Bench*, *Common Pleas*, *Exchequer*, counties palatine of *Cheſter*, *Lancaſter* and *Durham*, and great ſeſſions in *Wales*, as is therein directed, might be ſworn, admitted and inrolled to be a ſolicitor in all or any of the courts of equity, in the ſaid act ſpecified, without any fee for the oath, or any ſtamp to be impreſſed on the parchment, whereon ſuch admiſſion ſhould be written, if the maſter of the rolls, two maſters of the *Chancery*, the barons of the court of *Exchequer*, the chancellor of the dutchy of *Lancaſter*, and the judges of the other courts of equity, in the ſaid act mentioned for the time being, or any of them reſpectively, ſhould, upon examining ſuch attorney touching his fitneſs and capacity to act as a ſolicitor in courts of equity, be ſatisfied that ſuch attorney is duly qualified to be ſo admitted; but there being no proviſion made in the ſaid in part recited act, for admitting perſons (who had been, or ſhall be ſworn, admitted, and inrolled ſolicitors of any of the courts of equity in the ſaid act mentioned) attornies of any of his majeſty's courts of law therein alſo mentioned, although ſuch ſolicitor ſhould be duly qualified in all other reſpects; Wherefore, and to ſupply ſuch omiſſion, Be it enacted by the authority aforeſaid

Solicitors in the courts of Equity may be admitted attornies without fees.

aforeſaid, That from and after the ſecond day of *May* one thouſand ſeven hundred and fifty, any perſon who hath been already, or who at any time or times hereafter ſhall be ſworn, admitted, and inrolled a ſolicitor in any of his majeſty's courts of equity at *Weſtminſter*, in ſuch manner as by the ſaid act is directed, may be ſworn, admitted, and inrolled to be an attorney of his majeſty's court of *King's Bench* or *Common Pleas* at *Weſtminſter*, without any fee for the oath, or any ſtamp to be impreſſed on the parchment whereon ſuch admiſſion ſhall be written (his having been ſworn, admitted, and inrolled a ſolicitor in any of the courts of equity afore-mentioned notwithſtanding) if the judges of the ſaid courts of *King's Bench* or *Common Pleas* for the time being, or any of them reſpectively, ſhall, upon examining ſuch ſolicitor, touching his fitneſs and capacity to act as an attorney in the ſaid reſpective courts, be ſatisfied that ſuch ſolicitor is duly qualified to be ſworn, admitted, and inrolled an attorney, purſuant to the ſaid in part recited act, and other the laws now in force concerning attornies and ſolicitors.

7 Geo. 3. c. 31.

By Stat. 7 *Geo. 3. cap.* 31. It is enacted, that perſons, who have omitted to cauſe affidavits to be made and filed within due time, of contracts to ſerve as clerks to attornies, or ſolicitors, cauſing the ſame to be done on or before 25 *Dec.* 1767, are indemnified; and ſuch affidavits are declared to be effectual. [*For more learning concerning attornies, ſee Cunningham's Law Dict. tit.* Attorney; The law of attornies and ſolicitors; *or* Laws concerning maſters and ſervants, *p.* 83 to 114]

Award.

AWARD is a determination or judgment which one or more makes at the requeſt of two parties at the leaſt, for and upon account of ſome debt, treſpaſs, or other controverſy between them. *Termes de la ley.*

To every award, five things are incident, namely, matter of controverſy, ſubmiſſion, parties to the ſubmiſſion, arbitrators, and delivering of the award. *Dyer* 217. *pl.* 60.

The matters in controverſy.

Where the right of Freehold is in debate, the property cannot be transferred by an award; for the arbitrators are in the room of the parties themſelves, and act in their ſtead as far as commiſſioned; whatever therefore the parties can do, may be done by the arbitrators, but the parties cannot paſs corporeal inheritances without ſolemn livery. But if the condition of an obligation is to ſtand to the award of *J. S.* touching ſuch lands, and the arbitrator awards the lands to one, and that the other ſhould releaſe to him; if he do not do this, the obligation is forfeited, though the other party do not convey to him to make him a good title; for the arbitrator hath not awarded any act to be done by the party, and the award itſelf cannot transfer the right, and ſo muſt be void, and then the condition of the obligation cannot be forfeited; for the awarding the lands to one cannot be

be expounded, that the other ſhall infeoff him. If, where there is no bond, the abitrator award that one ſhall infeoff the other, it ſeems an action on the caſe may be maintained for not doing it; for the award in itſelf is as good as if there were a bond, and then there is the ſame reaſon an action ſhould lie, as that the condition of the obligation ſhould be forfeited; for if ſuch an award were void, then the condition of the obligation ſhould be forfeited; for if ſuch an award were void, then the condition of the obligation to perform it could not be broken. 1 *Bac. Abr. tit. Arbitrament and Award* (A) cites 1 *Rol. Abr.* 242. 14 *Hen.* 4. 19, 24. 9 *H.* 6. 6. 3 *H.* 4. 6. 11 *H.* 4. 12. *Keilw.* 99. 1 *Leon.* 288. 1 *Rol. Abr.* 244. 9 *E.* 4. 44.

An annuity is not determinable by award, for it is reckoned in nature of a freehold, and therefore cannot paſs without the deed of the party. 1 *Rol. Abr.* 266.

Partition cannot be made by award, for a freehold cannot paſs without livery and ſeiſin. 1 *Rol. Abr.* 242.

It has been doubted, whether leaſes for years, being chattels real, could be transferred by award; therefore it ſeems ſafeſt when the controverſy relates to theſe, that the parties be bound in mutual obligations to perform the award; and then if the arbitrators award that one ſhall aſſign, transfer, *&c.* the leaſe to the other, if he refuſes, he forfeits his obligation. 1 *Rol. Abr.* 242. 9 *Co.* 78. 6 *Co.* 41. 1 *Leon.* 104.

Cauſes criminal are not arbitrable, becauſe they ought to be puniſhed for the common good. *Weſt Symb. part* 2. *ſect.* 23. Though the ſubmiſſion be by bond, yet the obligation is void, and the parties may be puniſhed for entering into ſuch bonds. 2 *Ven.* 109.

Alſo cauſes matrimonial ſeem not arbitrable, becauſe marriage ought to be free, and religion diſallows ſevering thoſe whom the church hath joined. *Weſt Symb. part* 2. *ſect.* 33. 1 *Rol. Abr.* 252. But the damages a perſon ſuſtained by a promiſe of marriage, or any thing relating to a marriage portion, may be ſubmitted. 16 *E.* 4, 2.

Debts due by ſpecialty cannot be diſcharged by naked Award; but if the ſubmiſſion were by bond the award would be a good bar, for one ſpecialty may be diſſolved by another. 6 *Co.* 44. *Cro. Jac.* 99.

A certain and fixt debt is not diſcharged by an award, for the end and deſign of an arbitration is to reduce uncertain debts and duties to a certainty; and to award a man a certain debt is to give him no more, nor do any greater thing for him than was done before; for now he can have but an action, and that he might have before, and to give him leſs than he had before is to do him a manifeſt injuſtice, which the arbitrator cannot do. 1 *Rol. Abr.* 264.

It is held clearly, that all chattels perſonal, and perſonal actions, ſuch as treſpaſs, conſpiracy, maintenance, *&c.* may be determined by arbitration, and the right transferred by naked award, though the ſubmiſſion were not by deed; for theſe being transferable by the party himſelf without any ſolemnity, whatever the parties themſelves could do, may be done by the arbitrators, who are their ſubſtitutes, and ſtand in their place; and if on theſe ſubmiſſions without deed the arbitrators award one party a ſum certain, he may bring an action of debt for it; but if they award the doing of

ſome other thing, which is beneficial to him, he muſt bring his action on the caſe. 1 *Rol. Abr.* 242. 9 *Co.* 78.

The arbitrators cannot make an award of matters different from thoſe which were ſubmitted; therefore if the ſubmiſſion be of ewes with lambs; and after the ſubmiſſion the lambs are yeaned, they cannot arbitrate concerning the lambs. 1 *Keb.* 600. 2 *Weſt Symb. ſect.* 32.

The different kinds of ſubmiſſion and the revocation thereof.

The ſubmiſſion is the authority given by the parties in controverſy to the arbitrators, to determine and end their grievances, and this being a contract or agreement muſt not be taken ſtrictly, but largely, and according to the intent of the parties ſubmitting. *Weſt Symb. part* 2. *ſect.* 1, 2.

This ſubmiſſion may be by word or deed; if the ſubmiſſion be by word, there is no remedy to enforce the party to perform the award, but reciprocal actions on the caſe, and an action of debt will lie, if money be awarded, for it is in nature of a ſimple contract. 1 *Keb.* 600. 2 *Keb.* 238. 3 *Keb.* 64.

If the ſubmiſſion be without deed, it may be revoked without deed, and the party ſhall loſe nothing, for *ex nuda ſubmiſſione non oritur actio.* 8 *Co.* 81, 82. But the party muſt give notice of the revocation. 1 *Sid.* 281.

Alſo if the ſubmiſſion be by deed, it is of its own nature countermandable, though made irrevocable by the expreſs words of the deed, for the arbitrators being conſtituted, and put in the place of the parties, by their conſent, to act for them, they can no longer act than they have ſuch conſent. 8 *Co.* 82. 1 *Sid.* 281. 1 *Brownl.* 62. 2 *Brownl.* 290.

But where a man obliges himſelf to ſtand to an award, if the party revokes it according to his power, he hath forfeited his obligation, for the making the award becomes impoſſible by his own default, and therefore the obligation is ſimple; but if it be without obligation he forfeits nothing. 8 *Co.* 82, 83. 1 *Brownl.* 62.

If ſeveral plaintiffs or defendants ſubmit themſelves to an award, one cannot revoke the ſubmiſſion without the other, for joint acts are conſidered as the acts of one perſon, and there can be no revocation without the act of that perſon that made the ſubmiſſion. 1 *Brownl.* 62.

If a *Feme Sole* ſubmits to arbitration, and afterwards marries, this is a revocation of the ſubmiſſion; and if it be by bond the bond is forfeited. 2 *Keb.* 865. 1 *Jones* 388.

If one have judgment in an ejectment, and then they ſubmit the controverſy to arbitration, but before any award be made he ſues out execution, it is a forfeiture of the bond, for he is the cauſe no award can be made. *T. Jones* 134.

In debt upon a bond to perform an award, and *oyer* of the condition, the defendant pleads no *Submiſit*, the plaintiff need not aſſign a breach, for the defendant puts the whole ſtreſs of his cauſe upon a matter antecedent to the alledging a breach; for if there was no ſubmiſſion there could be no award, and conſequently no breach of it. 1 *Sid.* 290.

Alſo a ſubmiſſion may be made a rule of court, purſuant to the ſtatute 9 & 10 *W.* 3. And it is ſaid, that although the ſubmiſſion be by bond, yet the party may have it made a rule of court, in which caſe it is ſaid, he

may

may proceed on the bond, and likewiſe have an attachment for not performing the award. 1 *Salk.* 73. *See* 1 *Sid.* 54. *Raym.* 35.

Stat. 9 & 10 *Will.* 3. *c.* 15. [*A. D.* Intituled.] "An act for determining differences by arbitration."

Whereas it hath been found by experience, that references made by rule of court have contributed much to the eaſe of the ſubject, in the determining of controverſies, becauſe the parties become thereby obliged to ſubmit to the award of the arbitrators, under the penalty of impriſonment for their contempt, in caſe they refuſe ſubmiſſion: Now for promoting trade, and rendering the awards of arbitrators the more effectual in all caſes, for the final determination of controverſies, referred to them by merchants and traders, or others, concerning matters of account, or trade, or other matters: Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in parliament aſſembled, and by authority of the ſame, That from and after the eleventh day of *May*, which ſhall be in the year of our lord one thouſand ſix hundred ninety-eight, it ſhall and may be lawful for all merchants and traders, and others deſiring to end any controverſy, ſuit, or quarrel, controverſies, ſuits, or quarrels (for which there is no other remedy but by perſonal action or ſuit in equity) by arbitration, to agree that their ſubmiſſion of the ſuit to the award or umpirage of any perſon or perſons ſhould be made a rule of any of his majeſty's courts of record, which the parties ſhall chooſe, and to inſert ſuch their agreement in their ſubmiſſion, or the condition of the bond, or promiſe whereby they oblige themſelves reſpectively to ſubmit to the award or umpirage of any perſon or perſons; which agreement being ſo made and inſerted in their ſubmiſſion or promiſe, or condition of their reſpective bonds, ſhall or may, upon producing an affidavit thereof, made by the witneſſes thereunto, or any one of them, in the court of which the ſame is agreed to be made a rule, and reading and filing the ſaid affidavit in court, be entered of record in ſuch court, and a rule ſhall thereupon be made by the ſaid court, that the parties ſhall ſubmit to, and finally be concluded by, the arbitration or umpirage which ſhall be made concerning them by the arbitrators or umpire, purſuant to ſuch ſubmiſſion; and in caſe of diſobedience to ſuch arbitration or umpirage, the party neglecting or refuſing to perform and execute the ſame, or any part thereof, ſhall be ſubject to all the penalties of contemning a rule of court, when he is a ſuitor or defendant in ſuch court, and the court on motion ſhall iſſue proceſs accordingly, which proceſs ſhall not be ſtopped or delayed in its execution, by any order, rule, command, or proceſs of any other court, either of law or equity, unleſs it ſhall be made appear on oath to ſuch court, that the arbitrators or umpire miſbehaved themſelves, and that ſuch award, arbitration, or umpirage, was procured by corruption, or other undue means.

Merchants and traders, &c. deſiring to end controverſies by arbitration, may agree their ſubmiſſion of the ſuit to the award of any perſon.

Agreement ſo made to be inſerted in their ſubmiſſion, &c.

Parties to be finally concluded by ſuch arbitration.

In caſe of diſobedience, party neglecting ſubject to penalty, &c.

unleſs arbitrators miſbehaved themſelves.

Sect. 2. "And be it further enacted by the authority aforeſaid, That any arbitration or umpirage procured by corruption, or undue means, ſhall be judged and eſteemed void and of none effect, and accordingly be ſet aſide by any court of law or equity, ſo as complaint of ſuch corruption or undue

Corrupt arbitration void, and may be ſet aſide, &c.

practice be made in the court where the rule is made for ſubmiſſion to ſuch arbitration or umpirage, before the laſt day of the next term after ſuch arbitration or umpirage made and publiſhed to the parties; any thing in this act contained to the contrary notwithſtanding.

The act 9 & 10 Will. 3. c. 15. was made to put ſubmiſſions where no cauſe was depending, upon the ſame foot with thoſe where there was a cauſe depending: and it is only declaratory of what the law was before, in the latter caſe. 2 Bur. Rep. 701. Mich. 32 Geo. 2. B. R. Lucas ex dimiſſ. Dr. Markham et al. v. Dr. Wilſon.

Upon ſhewing cauſe why an attachment ſhould not iſſue againſt Dr. *Wilſon*, for refuſing to perform an award made purſuant to a ſubmiſſion entered into by rule of this court in *the above mentioned cauſe then there depending*, it became part of the queſtion, "Whether *this* was within the act of 9, 10 *W.* 3. *c.* 15. for determining differences by arbitration." And the court thought that it was *not*, but that it ſtood upon the common law, independant of the act, which was made, to put ſubmiſſions to arbitrations in caſe where there was *no* cauſe depending upon the *ſame* foot as thoſe where there *was* a cauſe depending. But here *was* a cauſe depending at the time of the ſubmiſſion. And therefore the caſe was *not* within the proviſion of this act. And lord *Mansfield* held this act to be *only declaratory* of what the law was before, in caſes where there was a cauſe depending in the court. He added, that the court will *not enter* at all into the merits of the *matter* referred to arbitration, but only take into conſideration ſuch legal objections as appear upon the face of the award, and ſuch objections as go to the *miſbehaviour of the arbitrators*. In the preſent caſe, the rule for the attachment was made abſolute.

To agree that their ſubmiſſion] See the above act 9 & 10 *Will.* 3. *c.* 15. *ſect.* 1. An arbitration bond had theſe words, *And if the obligor ſhall conſent that his ſubmiſſion ſhall be made a rule of court, that then*, &c. Upon motion to make this ſubmiſſion a rule court, it was objected, that theſe words did not imply his conſent, but if he would forfeit his bond, he need not let it be made a rule of court, yet becauſe this clauſe could be inſerted for no other purpoſe, the court took theſe conditional words to be a ſufficient indication of conſent. 1 *Salk.* 72.

Any of his majeſty's courts of Record] A matter being referred by rule of court to the determination of the judges of aſſize, it was moved that the judges determination might be made a rule of court; and *per Holt*, where a matter is referred to arbitrators by rule of court, and they make their award, we will compel a performance of it, as much as if the award were part of the rule, ſo a new rule is needleſs. 1 *Salk.* 71. *Note*; the conſtant practice is to make the rule at *Niſi Prius* a rule of the court above; which is always granted on motion.

Shall be ſubject to all the penalties] See the above act of 9 & 10 *Will.* 3. *ſect.* 1. If one of the parties revokes the ſubmiſſion, or hinders the arbitrators from proceeding in the award, the court will grant an attachment. 1 *Salk.* 37. But if the party dies, there is no remedy by attachment againſt his repreſentative, for the contempt dies with him. 2 *Vern.* 444. If the party excepts to the award, though it be affirmed, an attachment will not be granted; for the nonperformance of it while the matter was *ſub judice*, was no contempt. 1 *Salk.* 73. Alſo the party muſt be required perſonally to perform the award, and ſuch perſonal demand muſt be made out by affidavit, otherwiſe the court will not grant an attachment. 1 *Salk.* 83.

Arbitrators

Arbitrators or umpire, miſbehaved themſelves] On motion to ſet aſide an award, becauſe the arbitrators went on without giving the party time to be heard, or produce a witneſs, *Holt* ſaid, That the arbitrators being judges of the party's own chooſing, he ſhall not come and ſay, that they have not done him juſtice, and put the court to examine it; *aliter* when they exceed their authority. 1 *Salk.* 73. But awards have been frequently ſet aſide, eſpecially in equity, where the arbitrators have appeared to have been miſtaken, or have been guilty of corruption or partiality; as if they have an intereſt in the thing in controverſy. 2 *Vern.* 251. So where there are three arbitrators, and two of them by fraud or force exclude the other, or if they have private meetings, and admit one of the parties, and give notice to the other. 2 *Vern.* 514. So where they awarded 495 *l.* againſt one of the parties, for calling the other, who was a butcher, a *bankrupt knave*, repair his honour, as they called it. 3 *Chan. Rep.* 76. 2 *Vern.* 251. *Vide* 1 *Vern.* 157. So where the ſubmiſſion was to arbitrators, and they had power to chooſe an umpire, which they did, by throwing *croſs* and *pile* who ſhould name him, and for this the court ſet aſide the award. 2 *Vern.* 485.

The court wherein the rule is made is the proper court to examine into the partiality of the arbitrators. 2 Atkyns's Rep. 155. In Chanc. March 16, 1740.

An award was made a rule of the court of the *King's Bench* according to a ſubmiſſion for that purpoſe, and an attachment has been granted for not obeying the award. The plaintiff here has brought a bill ſuggeſting fraud and corruption in the arbitrators, and praying that the award may be ſet aſide. The defendant pleads the award in bar to the plaintiff's bill, and inſiſts it is a fair and juſt award. Lord chancellor ſaid to the plaintiff's counſel, why did you not proceed in the court of *King's Bench*, the proper court to examine into the partiality and corruption of arbitrators, which you might have done by ſhewing cauſe, why the rule for an attachment on the non-performance of the award ſhould not be made abſolute. I remember, ſaid his lordſhip, but one inſtance in this court of a bill brought for this purpoſe, which was in the caſe of *John Ward*. But as the anſwer of the defendant to this bill is very looſe and general, and there is an expreſs ſubmiſſion to amend any errors which the arbitrators may have made in reſpect to the mutual accounts delivered in to them by the parties: Let the plea ſtand for an anſwer, with liberty to except.

Where the parties have agreed to make the ſubmiſſion to an award a rule of court, and to be reſtrained from bringing a bill in equity, the arbitrators, notwithſtanding the award may be defective in point of law, may plead it in bar to a bill here.

The plaintiff and Mr. *Eade* had been partners in trade, but upon the diſſolution of the partnerſhip, ſome diſputes ariſing between them, a ſuit was carried on for ſome time in equity; but a propoſal being made to refer all matters in controverſy, it was agreed to, and the ſubmiſſion was made an order of this court; one condition in it was, that the parties ſhould be reſtrained from bringing a bill in equity againſt the arbitrators: they awarded 9150 *l.* to be due to Mr. *Eade* on the ballance of accounts; upon which Mr. *Lingwood* brought a bill againſt the arbitrators, *Croucher* being one, charging corruption and partiality, and praying that they may ſet forth the general accounts between the plaintiff and the defendant *Eade* relating to the partnerſhip. To ſo much and ſuch part of the bill as ſeeks a general account, *&c.* the defendant refuſed to diſcover, and pleadeth the award in bar. The bill further prayed a diſcovery from what account or accounts of the parties they founded their award. To this part they likewiſe refuſed

2 Atkyn. Rep. 395. in Chan. 6 Aug. 1742. Arbitrators may plead the award in bar to a bill charging partiality, but they muſt ſupport their plea by ſhewing themſelves impartial, or the court will give a party a remedy by making them *pay coſts*.

fuſed to diſcover, and pleaded the award itſelf in bar. *Lord Chancellor:* There are many inſtances in this court, where arbitrators to a bill charging corruption and partiality, may plead the award in bar to the diſcovery; but then it is incumbent upon them to ſupport their plea, by ſhewing themſelves incorrupt and impartial, or otherwiſe the court will give a party a remedy by making arbitrators pay coſts. I remember an inſtance of this ſort in a famous caſe of *John Ward*, who being a party in a cauſe where one *John Warner* was an arbitrator, upon *Ward*'s coming into the room he ſaid, I *John Warner* will make you *John Ward* pay coſts; *Ward* complained to the court of this partial behaviour in the arbitrators, and the court inverted *Warner*'s threats, for they made him pay *John Ward* coſts. The great doubt with me is, as this award ſeems to be executory and not final, whether it is a good award at law; and if it is not good at law, then how can the arbitrators plead it in bar to the diſcovery prayed by the bill?

Where a ſubmiſſion to an award has been made a rule of court, it is a contempt of that court to diſpute the order, unleſs they can ſhew partiality, corruption or miſbehaviour in the arbitrators.

When the parties have ſubmitted to make the ſubmiſſion to the award a rule of court, it is a contempt of this court to diſpute the order, unleſs they can ſhew partiality, corruption or miſbehaviour in the arbitrators; and this will depend upon the denial of theſe facts in their anſwer; and if they do that ſufficiently, the plea ought to be allowed; but ſtill, if upon the hearing of the cauſe, the evidence ſhould be ſtrong enough to convince the court that the arbitrators have been guilty of corruption, partiality, or miſbehaviour, it will effectually open the plea: therefore I am of opinion notwithſtanding any defect in the award in point of law, yet upon the parties agreeing to make the ſubmiſſion a rule of court, and one condition in it being to be reſtrained from bringing a bill in equity againſt the arbitrators, the plea of the award by them ought to be allowed. In the caſe of Mr. *Robins*, the counſel, who was appointed an arbitrator by this court, accepted of it upon a proviſo that the parties would enter into a rule not to bring a bill in equity, which was done accordingly; notwithſtanding this, the party againſt whom the award was made, brought a bill againſt the arbitrator, and charged corruption and partiality; upon which Mr. *Robins* moved lord chancellor *King* that he might be ſtruck out from being a party to the cauſe: his lordſhip granted the motion, and ſaid it would be a very great hardſhip upon arbitrators, if they ſhould be harraſſed with ſuits, when they undertake ſuch an employment without any gratification; and that allowing they are liable to ſuch a bill, would effectually diſcourage perſons of worth from accepting of being arbitrators; and therefore he ſtruck him out from being a party. So in the caſe of the *Eaſt-India* company, where they agreed to wave the penalty, but inſiſted upon it afterwards; the bill was diſmiſſed as againſt the perſon who was liable to the penalty. *Vide the Eaſt-India company* verſus *Sandys*, 1 *Vern.* 127.

A plea to a bill brought to ſet a ſide an award, for a general account; *Lord Harwicke* al-

The plaintiff preferred his petition on the 26th of *March* laſt, to ſet aſide the award in the matter between him and *Eade*, which was diſmiſſed, but without prejudice to his bringing a bill for the like purpoſe; he brought a bill accordingly againſt the arbitrators and *Eade*, and prays by it that he may have an inſpection of all the accounts, from which the arbitrators framed their award, and that it may be ſet aſide, and that the defendant

Eade may account generally for all tranſactions during his partnerſhip with the plaintiff. lowed it as againſt the general account,

but held that the plaintiff was not precluded at the hearing from objecting to the award, for fraud or partiality in the arbitrators. 2 Atkyns's Rep. 401. In Chan. 15 Jan. 1742. Lingwood v. Eade.

The defendant *Eade* pleads, that in former cauſes between him and the plaintiff in this court, an order was made the eighteenth of *November* one thouſand ſeven hundred and forty, at the requeſt, and by the conſent of the parties, that all matters in difference between them, relating to their joint dealings, or otherwiſe, ſhould be referred to *Charlton*, &c. and the award to be made on the firſt of *May* then next; and by a ſubſequent order of the court, with the conſent of the plaintiff's counſel, the time for making the award was enlarged till the firſt of *November*, and by a third order till the firſt of *February*; that the arbitrators met forty-five times and upwards, (the plaintiff and defendant being preſent at the greateſt part of the meetings) and having fully heard and examined the plaintiff and the defendant and their ſeveral witneſſes, made their award within the time limited; *and among other things declared, that they had taken an account of the outſtanding debts due to, or owing by or from the complainant, and the defendant, or either of them, on account of their joint dealings, and they awarded that each ſhould pay and diſcharge one equal moiety of the ſeveral debts therein mentioned, (that is to ſay) to* Samuel Torin 92*l.* 10*s.* 9*d. to* Slingſby Bethel 82*l.* 18*s.* 2*d. and to* John Hide 15*l. which the ſaid arbitrators found to be then remaining due from the complainant or defendant, or one of them, on their joint accounts, be the ſame more or leſs than as abovementioned.*

" That the arbitrators have ſet forth, in a ſchedule to their award, an account of ſundry debts and effects owing to the partnerſhip, amounting to 5094*l.* 14*s.* 2*d.* which debts and ſecurities they awarded to belong in moieties to the plaintiff and the defendant; and for the better getting in the ſame, the arbitrators did thereby recommend it to the defendant and the complainant to conſent that an order might be made by this court, for the appointing a proper perſon converſant in mercantile affairs, to collect in the ſame for their joint uſe, and in caſe either of the parties ſhould refuſe to conſent thereto, the arbitrators did make it their humble requeſt, to this court, to order the ſame, as the moſt probable means to prevent future litigations between the ſaid parties.

" That the arbitrators did award and declare, that excluſive of the above matters, there was then due from the plaintiff to the defendant 9194*l.* 19*s.* 6*d.* on a juſt ballance, which they awarded to be paid by the plaintiff to the defendant by inſtalments of 2000*l.* at each payment, with intereſt at 4*l. per cent.* from the ſecond of the ſame *February*.

" That laſtly they did award, that upon payment of the ſaid 9194*l.* 19*s.* 6*d.* by the plaintiff, his executors, *&c.* they the ſaid plaintiff and this defendant, their reſpective executors and adminiſtrators, ſhould mutually execute and deliver to each other, reſpectively, a good and ſufficient releaſe and diſcharge (the form whereof to be previouſly ſettled by one of the maſters of this court, in caſe this court ſhould be pleaſed to give directions for the ſettling thereof,) whereby the ſaid parties ſhould reſpectively releaſe to each other,

other, all matters in difference between them relating to their joint dealings, *&c.*

" The defendant for plea further ſaith, that all the ſaid particulars ſo awarded are fair and juſt; all which matters and things the defenant pleads in bar to the plaintiff's bill, and ſubmits to the court whether he is obliged to make any further or other anſwer."

Mr. *Murray*, counſel for the plaintiff, confined himſelf to the objections againſt the award, becauſe he ſaid the plea of the award muſt fall to the ground, if the award itſelf is not good. An award muſt be the judgment of the arbitrator, and final; and it has been held to be a bad award, where the arbitrators direct that coſts ſhould be paid according to taxation. The firſt objection he took was, that here the arbitrators award, that the debts due from the partnerſhip ſhould be given in moieties by *Lingwood* and *Eade*, and then mentions only three debts, ſo that in this reſpect it is not final. The ſecond objection, that the arbitrators recommending it to the parties, to conſent that an order might be made by this court, for the appointing a proper perſon to receive in the debts due to the partnerſhip, is deputing a third perſon to do an act, which ought to have been done by themſelves, and therefore is not properly their own judgment. The third objection, that the arbitrators ought to have ſettled the releaſe themſelves, and not have left it to be done by a maſter under the order and directions of this court; and cited 1 *Salk.* 71. *Glover* verſus *Barrie.* That upon the whole it was not a complete award, and therefore the plaintiff ſhould be admitted to go on with his bill for an account, notwithſtanding the award.

Mr. Attorney General, counſel for the defendant *Eade*, in anſwer to the ſecond objection, with regard to the receiver, *ſaid*, the arbitrators could not do otherwiſe, as it was uncertain what would be got in, and therefore they could not award the exact ſum to each of the parties, but to be divided when received.

Lord Chancellor then put this caſe to Mr. Attorney General (which came before him when he was chief juſtice); Arbitrators had awarded that each of the parties ſhould give ſecurity to perform the award, but left it to a third perſon to ſettle the ſecurities, and for this reaſon held to be a void award; compare now this caſe with the preſent, where the arbitrators have referred it to a third perſon to get in the debts due to the partnerſhip.

To this Mr. attorney general ſaid, the award is final as to the property, but the means of aſcertaining that property is only recommended to be left to a perſon appointed by the court; in the caſe mentioned by your lordſhip, the arbitrators actually transferred to a third perſon a power which belonged ſolely to themſelves. As to the objection that the award is bad, becauſe the form of the releaſe is left to a maſter; as long as the ſubſtantial part, the awarding a releaſe of all demands, is provided for by the arbitrators; the bare leaving it to a maſter to ſettle the form of the releaſe, can never vitiate the award.

Mr. *Murray*, the ſolicitor general, ſaid in reply, the arbitrators here have awarded things out of the ſubmiſſion, that affect the juſtice of the caſe between

between the parties, which vitiates the whole award, and conſequently is no bar to the account.

Lord chancellor: Though the bill is brought for two purpoſes, yet one is conſequential to the other. Firſt, to ſet aſide the award. Secondly, for a general account. The prayer of the bill to ſet aſide the award muſt be founded upon the fraud, corruption, or miſbehaviour of the arbitrators; for it would be improper to come into this court to ſet it aſide merely for an objection in point of form. The other part of the bill is the original right he had before the award. I muſt conſider the plea as it is pleaded to the latter part of the bill, the general account. For, to be ſure, the plaintiff is intitled to an account, unleſs the award is a bar; and therefore the court muſt enter into all the legal objections againſt the award, which a court of law would have done, as it is inſiſted on by the plea, to prevent the general account.

Improper to come into this court to ſet an award aſide, merely for an objection in form.

I own I have been a good deal doubtful as to the nicety that courts of law have uſed, in determining awards; for they have formerly gone ſo far, as to make it almoſt impoſſible for arbitrators to do what is the main intention of the ſubmiſſion, the putting an end to differences between parties.

Courts of law formerly uſed too much nicety in determining awards.

But now courts of law themſelves, have in ſome meaſure departed from very ſtrict rules; as where arbitrators refer coſts to be taxed, the judges have compared awards to judgments at law, which though they muſt have certainty, yet the officers tax coſts, and therefore, where arbitrators give ſuch directions, it ſhall not vitiate the award; though in the old caſes it has been held, that arbitrators could not in any inſtance delegate their power.

Though arbitrators refer coſts to be taxed; yet it will not vitiate the award at law.

It may poſſibly be worth while for me to conſider, as courts of law themſelves have relaxed from their rigour and nicety in determining awards, whether courts of equity may not ſtill take greater latitude: but I am unwilling to do this, becauſe it would introduce confuſion and uncertainty, and make awards a mixed caſe, partly determined by arbitrators, and partly by the authority of this court; and therefore I chuſe rather to confine myſelf to one rule.

If courts of equity were to take greater latitude in determining awards than courts of law, it would introduce confuſion and uncertainty; better therefore to adhere to one rule.

As to the firſt objection, with regard to debts due from the partnerſhip, I will not lay any weight upon it; for as courts of law have ſaid, they will never make a preſumption to overturn an award; neither will I in this caſe preſume that there are any other debts due from the partnerſhip, than what are mentioned by the arbitrators themſelves.

As courts of law have ſaid they will never make a preſumption to overturn an award; ſo neither will a court of equity.

As to the ſecond objection, with regard to the receiver, which is recommended by the arbitrators, I own I have great doubts; but as the juſtice between the parties is the material thing, and the award being good

Where an award is good to a common intent, and anſwers the purpoſe of parties in ſubmitting to a reference, the court will not ſet it aſide upon trivial objections.

to a common intent, anſwers the purpoſe of parties in ſubmitting to a reference; I am of opinion it is ſufficient, for in caſes of this ſort, in mercantile affairs, which cannot admit of certainty, it would be too nice to defeat awards upon objections of this kind.

If arbitrators delegate their power, the award is totally void.

It has been ſaid by the plaintiff's counſel, that the arbitrators recommending it to the parties to conſent that an order might be made by this court, for the appointing a receiver, *&c.* and in caſe of the parties refuſal to conſent thereto, the requeſting the court to order the ſame, is a delegation of their power, which arbitrators cannot do.

And to be ſure, if they have delegated their power, the award is void for the whole. But Mr. attorney general ſays, what the arbitrators have done in this reſpect, is at moſt but ſurpluſage. Yet if it affected the juſtice of the things ſubmitted, it would not be ſurpluſage. But this ſeems to me to be only a recommendation of the arbitrators to the parties, which is not tying them down to ſubmit that a perſon ſhould be ſo appointed, but leaves them at large; and if the parties do not approve of this ſcheme, why then it is ſurpluſage only, and not a delegation of their power. The queſtion is, whether the arbitrators awarding that the debts due to the partnerſhip, when received, ſhall be divided in moieties between the parties, is ſufficient; and I am of opinion it is, for the arbitrators had no controul over the debtors themſelves, who might pay, if they pleaſed, the whole to one of the partners.

Arbitrators need not point out particularly the method in which the award is to be carried into execution.

To lay it down for a rule, that arbitrators muſt chalk out particularly the method in which the award is to be carried into execution, would be too nice, and overturn a great number of awards: for if this doctrine was to prevail, ſuppoſe one of the parties ſhould releaſe a debt due to the partnerſhip, it would be a breach of the award; for *qui dirimit medium dirimit finem*, and the other party could have no remedy, but either to bring an action or a bill for carrying the award into execution, which would make it endleſs, and no award could ever be effectual to finiſh diſputes between parties. I cannot think of any other method the arbitrators could have purſued; for though it has been ſaid at the bar, that they might have directed the parties to give ſuch perſon as the arbitrators ſhould appoint, a lettter of attorney to get in the debts, yet this would not have been adviſeable, becauſe if the perſon ſo deputed proved inſolvent, it would have been doubtful whether the arbitrators themſelves might not have been liable.

Where arbitrators have awarded releaſes the leaving it to the court to give directions to a maſter to ſettle the form does not vitiate an award.

The laſt objection is the arbitrators leaving it to a maſter to ſettle the form of the releaſe. Now the general rule in regard to making awards is this, that arbitrators ſhould award each party to give a releaſe, and if they do not, it is at the peril of the parties. Here it is, in the firſt place, fully and completely deſcribed in the award, what the parties ſhould do in point of giving releaſes, and then follows the reference to the maſter to ſettle the form. If the award had ſaid, that the releaſe ſhould be ſettled by the court firſt, and then the arbitrators would conſider whether they ſhould order a releaſe between the parties, this would have been very different, and I ſhould have inclined to think it a delegation of their power, and the award conſe-

conſequently void. But here they have awarded releaſes, and only leave it to the court, if they think proper, to give directions to a maſter to ſettle the form; and it would be very extraordinary when, I think, the arbitrators have done all that is neceſſary, and there is no occaſion for the court to interfere; yet becauſe they have ſaid, we leave it to the court, therefore I muſt interpoſe merely for the ſake of making that a bad award, which without my interpoſition would be a good one. Upon the whole, I am of opinion the award is good to a common intent, and the plea conſequently muſt be allowed againſt the general account; but the plaintiff is not precluded at the hearing of the cauſe from objecting to the award for fraud or partiality in the arbitrators.

In an agreement between partners to refer matters in diſpute, arbitrators ſhould be impowered to examine upon oath. 2 Atkyns's Rep. 569. 13 May 1743. Wellington v. Mackintoſh.

This came on before the lord chancellor, on the defendant's plea, that the plaintiff and he, on the 15th of *November* one thouſand ſeven hundred and twenty-eight, executed articles of co-partnerſhip, by which they covenanted to become joint traders, as *Blackwell-Hall* factors, for eight years, and agreed, in caſe any difference ſhould ariſe relating to their buſineſs, or of any covenant in the articles, it ſhould be referred; and avers, that all matters in the plaintiff's bill relate only to the partnerſhip, and that they have never been ſubmitted to arbitration, nor did the plaintiff ever propoſe a reference, or nominate any perſon to be an arbitrator, though the defendant offered, and was always ready to ſubmit all matters to arbitration, and demands judgment, if he ſhall further anſwer.

Lord chancellor: The plea ought to be diſallowed in this caſe; and yet I would not have it underſtood, that ſuch an agreement might not be made in ſuch kind of articles, and pleaded; but ſuch a clauſe ſhould have in it a power given to the arbitrators to examine the parties, as well as witneſſes, upon oath. But this bill is to diſcover and be relieved againſt frauds, impoſitions, and concealments, for which the arbitrators could not examine the parties on oath. Perſons might certainly have made ſuch an agreement as would have ouſted this court of juriſdiction, but the plea here goes both to the diſcovery and relief; and if I was to allow the plea as to relief, I could not as to the diſcovery, and then the court too muſt admit a diſcovery, in order to aſſiſt the arbitrators, which is not proper for the dignity of the court to do.

Of the parties to the ſubmiſſion.

Perſons that cannot contract cannot ſubmit to arbitration, therefore femes covert, Perſons compelled by threats and impriſonment, perſons profeſſed in religion, cannot ſubmit. 1 *Bac. Abr.* 136.

The huſband may ſubmit the chattels he hath in right of his wife to an award, for he may diſpoſe of them. *id. ib.*

If an infant ſubmit to arbitration, he may execute or avoid it at his election, as he may all other his contracts. 1 *Rol. Abr.* 730.

Perſons attainted or outlawed cannot ſubmit to arbitration, for they have no property, and cannot by the law controvert any thing. 1 *Bac. Abr.* 136.

A dean without the chapter, a mayor without his commonalty, the maſter of a college or hoſpital without his fellows, cannot ſubmit to an award, for the ſubmiſſion has the force of a contract, and they cannot contract without them. 1 *Bac. Abr.* 136.

If one party and the deputy or attorney of the other party ſubmit to an award, this is well enough, for the act of my deputy is my own act. 1 *Bac. Abr.* 136.

If ſeveral perſons do a treſpaſs, and one of the wrong-doers and the party to whom it is done ſubmit to arbitration, and an award is made, the other perſons ſhall take advantage of it by way of extinguiſhing of the treſpaſs; the ſame law where the party releaſes to one of them, for in both caſes a ſatisfaction really is, or is preſumed to be made, and a man cannot receive a double compenſation for the ſame wrong. 1 *Rol. Abr.* 268.

If ſeveral perſons on the one part, and ſeveral on the other ſubmit generally to any award, the arbitrators have not only power to determine matters between them jointly, but ſeverally and diſtinctly alſo; and an award between one only of the one ſide and another of the other ſide is good; for this is not doing leſs than the commiſſion warrants, ſince there is an authority in it to determine matters diſtinctly between them, for the ſubmiſſion is of all matters, ſo that it contains as well all things ſeverally beween each of them, as jointly between them all, and perhaps there may be no cauſe of award between the others. 1 *Bac. Abr.* 136.

The arbitrators or umpire.

The arbitrators are perſons indifferently choſen, to determine the matters in controverſy according to their own minds, whether they be matters of law or fact; infants, perſons excommunicate, outlawed, *&c.* may be arbitrators, for every perſon muſt uſe his own diſcretion in the choice of his judges, and being at liberty to chooſe whom he likes beſt, cannot afterwards object the want of honeſty or underſtanding to them, or that they have not done him juſtice. *Weſt. Symb. part* 2. *ſect* 27. *Hard.* 44. 1 *Salk.* 73.

The arbitrators are perſonally truſted with the authority, and it is not within their power to aſſign it; therefore if an award be to ſtand to the determination of a ſtranger, this is void; but if an award be, that an arbitrament made by *J. S.* ſhall ſtand, this is good, becauſe it is their own award, though it refers to the act of another; but though the arbitrators cannot transfer their power, yet they may award that others ſhall do a miniſterial act in ſubſerviency to their award; for what is done by ſuch perſons, is done by them as ſervants and inſtruments of the arbitrators, and is the act of the arbitrator himſelf; as, that ſuch a conveyance ſhould be made as counſel ſhould direct, ſuch coſts paid as the prothonotary ſhould tax, is a good award. 5 *Co.* 78. 1 *Rol. Abr.* 251. *Cro. El.* 726. *Palm.* 146. 2 *Rol. Rep.* 214. 1 *Sid.* 258. *Hard.* 45.

The arbitrators cannot reſerve to themſelves a future power, ſince that would enable them to make a double award, without the interpoſition of thoſe who impowered them at firſt. *Cro. Jac.* 315, 584. *Hob.* 218. 1 *Sid.* 59.

The arbitrators cannot make their award by parcels at ſeveral times, for when they have made an award they have executed their authority, and can do no more; and therefore if two ſubmit all debts, treſpaſſes, *&c.* And the arbitrators one day make an award of the debt, and of the treſpaſſes another day, this is not good as to the treſpaſſes, but they may deliberate of one thing one day, and of another the other day, and then make an intire award of the whole; alſo an award made in the night is good, for the

the party's attendance is not requiſite; but where an act cannot be done without perſonal attendance of a third perſon, it cannot be done in the night. 1 *Rol. Abr.* 250. *Cro. El.* 676.

If a ſubmiſſion is made to *A.* and *B.* when their occaſion will permit, convenient time muſt be given, after requeſt; and if no arbitration be then made, the parties may revoke. 1 *Sid.* 281. 2 *Keb.* 10.

If there be a ſubmiſſion to arbitration, and if they cannot agree before the firſt of *May*, then the ſubmiſſion is made to *J. S.* to be the umpire, to be made before a certain day then next to come; if the arbitrators never diſcourſe about the matter, ſo as there is no diſagreement between them, yet if they make no award before the day, the umpire may determine the matter; for theſe words, *if they cannot agree*, are not to be taken literally, but only that if they do make no award, that then, *&c.* 1 *Rol. Abr.* 261.

If the condition of an obligation be, to ſtand to the award of certain perſons, *A.* and *B.* and *I. S.* being umpire for both parties, in this caſe an award by *A.* and *B.* is good; for *umpire* in the common ſignification of the word, denotes a perſon that is to make an end of the matter, if the others cannot. 1 *Rol. Abr.* 261, 262.

If the condition of an obligation be, to ſtand to the award of *A. B. C.* and *D. ita quod* the ſaid award before ſuch a day be made in writing by the ſaid *A. B. C.* and *D.* or any two of them under their hands, *&c.* any two of the arbitrators, without the reſt, may make an award; for though by the firſt part they are bound to ſtand to the award of thoſe four, yet their power is divided by the ſubſequent words, and the *ita quod* is but an explanation of the condition, and the whole makes but one ſentence. *Yelv.* 203. See 1 *Bac. Abr.* 138.

If the arbitrators and umpire have the ſame time allotted them to make their award in the ſubmiſſion, as to the umpire it is not abſolutely void; for if one of the arbitrators die, or abſolutely refuſe to meddle, then the umpire may determine the matters; otherwiſe not; for two different judges cannot have a concurrent juriſdiction of the ſame thing; and a diſagreement between the arbitrators at their firſt meeting, gives no power to the umpire to interpoſe, becauſe, though they do not agree at their firſt meeting, they may at the next. 1 *Bac. Abr.* 138.

The arbitrators may chooſe the umpire before their own time is expired, for that is no relinquiſhing the arbitration, but a prudent proviſion in caſe they ſhould diſagree; and therefore an award by them at any time before their time expired is good, and an award in that time by the umpire is void. 1 *Bac. Abr.* 138.

The condition of a bond was, if the arbitrators make an award on or before the nineteenth of *Feb. &c.* and if they do not make it before, *&c.* their authority doth not determine till after the nineteenth. And the award cannot be made by the umpire before the 20th. 1 *Bac. Abr.* 138.

If the arbitrators have time to the 10th of *June*, and if they agree not to nominate one to determine it by the 10th, here if the arbitrators chooſe an umpire, that determines their power; for it ſeems plainly the deſign of the parties, that either one or the other may determine it by that time, and not that both ſhall have concurrent juriſdictions. 1 *Bac. Abr.* 138.

If

If the arbitrators make an award of part, during their time, the umpire cannot make an award of the reſt, unleſs the ſubmiſſion be, that if the arbitrators make an award of part, or of none, then the umpire may make an award of the part remaining or the whole. 1 *Rol. Abr.* 262.

If the condition of an obligation be to ſtand to the award of *A.* and *B.* ſo as the ſaid award be made before ſuch a day; and if they make no award, then to ſtand to the award of ſuch umpire as the ſaid *A.* and *B.* ſhall nominate, ſo as the ſaid umpire do make his award before another day, and the arbitrators before the firſt day make no award, but afterwards name *C.* to be umpire, who thereupon immediately refuſes, and the arbitrators afterwards nominate *D.* who before the laſt day makes an award; this is a good award; for the nomination of *C.* to be umpire did not make him ſo; but when he refuſed, it amounted to no more than a bare propoſal to him, and the form of pleading always is *ſuſcepto ſuper ſe onere arbitri*; ſo that it is the acceptance makes him umpire. 1 *Vent.* 113, 114.

If the condition of an obligation be, That whereas *A.* and his ſon, of one part, *&c.* have ſubmitted to the award of *B.* and *C. ita quod &c.* before 1 *May*, and if they make none, to the award of ſuch umpire as they ſhould chuſe to be made before the firſt of *June*, and the arbitrators make no award, but chuſe an umpire who makes an award, but *quoad* the ſon awards nothing; this is a void award; for though the *ita quod* be in the clauſe referring to the arbitrators, and the award is made by the Umpire, yet the *ita quod* relates by conſtruction to the umpire as well as the arbitrators. 1 *Lev.* 139, 140.

Of the award, and what ſhall be deemed a good award.

Here it muſt be obſerved, that the courts of juſtice have of late been more liberal in the conſtruction of awards than formerly, and that many of the niceſt diſtinctions to be met with in the books are by no means to be admitted as precedents in expounding awards at this day; and this the courts do in furtherance of juſtice, and for quieting of controverſies; however, as an award is a judgment, and can only be expounded by itſelf, without the aid of an averment of matters *dehors* or external to explain the meaning of the arbitrators, it is neceſſary that on the face of it appear, 1ſt, That it be made according to the ſubmiſſion. 2dly, It ought to be certain. 3dly, It ought to be equal and mutually ſatisfactory. 4thly, It muſt be of a thing lawful and poſſible. 5thly, It muſt be final. 10 *Co.* 57. *Dyer* 242.

The award muſt be according to the ſubmiſſion.

If an award be made of any other thing than what is contained in the ſubmiſſion, it is void; for no act is my own, or binding to me, unleſs done by me or by commiſſion from me. *Plow.* 396. *Dyer* 242.

If arbitrators award to do an act to a ſtranger, that is good; for the ſtranger is put by the arbitrators in the place of the party, and they have power to award this act, ſince it is not impoſſible or unequal, and it is relating to the ſubmiſſion. 10 *Co.* 131. 3 *Leon.* 62. 1 *Rol. Abr.* 248.

But an award that an act ſhould be done by a ſtranger, is void, becauſe he is not within the ſubmiſſion. *Hard.* 46.

If two ſubmit to an award all actions, and the arbitrators award a releaſe of all actions till the time of the award, ſome books have ſaid that this is void for the whole, becauſe it extends to things partly within the ſubmiſ-

ſion

ſion and partly to things out of it, and it is one entire act; for, ſay they, to do that act they are not obliged, becauſe not within the ſubmiſſion, and to do an act relating only to things contained in the ſubmiſſion, is another act from what is awarded; others have ſaid that this is not void, unleſs there are ſhewn on the other ſide cauſes of action ariſing between the time of making the award, otherwiſe none ſhall be intended; and then the releaſe relates only to the things in ſubmiſſion. 1 *Bac. Abr.* 139. 10 *Co.* 131, 132. 1 *Rol. Abr.* 242.

But it has been reſolved, and ſeems now ſettled, that the act is not intire; for he may releaſe all actions to the time of the ſubmiſſion; for though there is one deed of releaſe awarded, yet that deed relates to ſeveral things that are dividable in their own nature one from the other, and ſo it ſhall be good for what is in the ſubmiſſion, and void for the reſidue. 3 *Lev.* 188. 2 *Mod.* 169. 1 *Salk.* 74. 3 *Lev.* 413. 2 *Lev.* 3.

The arbitrators cannot bind a man's liberty or right to real things, where perſonal things are ſubmitted; and therefore if they award ſervice for two years, or a releaſe of the right of lands in ſatisfaction for a treſpaſs, this is void; for no body can be ſuppoſed to ſubmit more than his perſonal eſtate to anſwer a perſonal injury, for that only might be taken in execution for it by the common law; but his perſonal eſtate may be bound to anſwer it; therefore if the arbitrators award a horſe, money, a quart of wine in ſatisfaction for a treſpaſs, this is good; for here a new perſonal duty is raiſed inſtead of the former, and to ſatisfy out of the perſonal eſtate is neceſſarily implied in the ſubmiſſion; for this is a means neceſſary to quiet the matters. 1 *Bac. Abr.* 140.

If two ſubmit to award all quarrels concerning tithes in a place certain, and the arbitrator awards that one ſhall pay to the other 20 l. and the other ſhould releaſe to him all actions, this ſhall be intended all actions concerning the tithes, unleſs the contrary appear on the other ſide, and the actions may be ſevered; and this ſhall be good for the acts in the ſubmiſſion, and void for the reſt. 1 *Bac. Abr.* 140.

A ſubmiſſion of all debts and demands, and a releaſe of all judgments, executions and extents awarded, is a good award. 2 *Sand.* 190.

A ſubmiſſion of all matters between the plaintiff and another, and an award made of things that the party hath in right of his wife, is good; for theſe things are comprehended under the words *all matters*. 3 *Bulſt.* 65.

A ſubmiſſion of all injuries, and award of all debts, duties, and treſpaſſes, a good award; for whatever is againſt law is an injury. 3 *Bulſt.* 312, 313.

A ſubmiſſion of all actions now depending, and an award of all actions, good; for it ſhall be intended actions depending. *Cro. El.* 66, 858.

There is a controverſy between *A.* and *B.* on one part, and *C. D.* and *E.* on the other part, and *C.* for himſelf, and *D.* and *E.* ſubmits the matter, and promiſes to ſtand to the award, if the award be that *C.* ſhall pay ſo much in ſatisfaction of the controverſy, it ſhall bind him, though it concerns *D.* and *E.* who are ſtrangers to the ſubmiſſion, inaſmuch as the thing awarded

awarded is to be done by him, and not by the ſtrangers to the ſubmiſſion. 1 *Rol. Abr.* 244.

If there be a controverſy between the parſon and his pariſhioners, whether tithes ſhall be paid in *ſpecie* or not, and they ſubmit all controverſies, and the arbitrators award that they ſhall pay ſo much a year for tithes, this is good; for that was the debate on the award. 1 *Rol. Abr.* 254.

If the ſubmiſſion be of all controverſies to the time of the ſubmiſſion, and the award be that one of them ſhould deliver up an obligation made ſince the ſubmiſſion, in ſatisfaction of all matters, *&c.* this is good, becauſe the bond is given only in ſatisfaction. 1 *Rol. Abr.* 246.

An award may be good, though part of it may be made of a thing not within the ſubmiſſion; as if an award be to pay 1000 l. and to procure a ſtranger to be bound to pay 22 l. *per annum*, the plaintiff muſt lay the breach in not paying the 1000 l. for as to the other part it is wholly void. 1 *Bac. Abr.* 141.

If an award be good for part, and void for part, the plaintiff may aſſign the breach, that the defendant did not perform the thing ſubmitted, *nec performavit in aliquo*; for it ſhall refer only to that in the ſubmiſſion, for reſt is void, and not to be performed. 2 *Rol. Rep.* 48.

If the arbitrators award on one ſide an act contained in the ſubmiſſion, and on the other ſide an act out of it, this a void award for the whole; for this is unequal, becauſe there is ſomething on the one ſide awarded only, and nothing on the other; for what they intended to ballance it with on the other appears to be void. *Poph.* 134. *Cro. Jac.* 149. 3 *Mod.* 372.

If the arbitrators award 10 l. to one of the parties, and 5 l. to a ſtranger; this is good as to the party himſelf, and void for the ſtranger. 2 *Sand.* 293.

The award muſt be certain.

As an award is in nature of a judgment, it ought to be wholly deciſive; for if it doth not determine the matter, it becomes the cauſe of a new controverſy; therefore if the arbitrators award a bond for quiet enjoyment of lands, without appointing a certain ſum, this is a void award, and the party is not obliged to give bond to the value of the land, for then the ſenſe of the award muſt be ſupplied by averment; now if it hath the credit of a judgment, there can be no interpretation made of the award, but by the words of the award itſelf; for if it receives its meaning from any matters out of the award, the mind of the arbitrators is only gueſſed at, and not expreſſed, but the parties intended to be obliged only by what the arbitrators themſelves declare to be their award; and were the bond to be according to the value, they cannot aſſign their power to any perſon to aſſeſs the value. 1 *Bac. Abr.* 142.

So if the arbitrators award that one party ſhall give ſecurity to the other for the payment of 16 l. this is not a good award, becauſe it doth not appear what ſecurity, whether by bond or otherwiſe. 1 *Bac. Abr.* 142.

If the condition of an obligation be, to ſubmit to an award all controverſies between *A.* and *B.* and an award is made that *A.* ſhall permit *B.* to enjoy certain leaſes of lands purchaſed from *J. S.* and that *B.* ſhall pay the rents, and perform the covenants, and deliver to *A.* a true copy of the

leaſes, and pay the arrears to the time of the purchaſe from *J. S.* this is a good award, as to the rents and covenants, though not particularly ſpecified; for it is true, an award is to be interpreted by its own words, and not by any matter out of the award which doth not appear in the words; but when the words of an award have relation to things certain out of the award, theſe things may be averred; for that is the expreſs mind of the arbitrators, which they have expreſsly referred to; but as to the arrears the award is void, becauſe they have not referred to any matter that falls within the conuzance of *B.* for he cannot compel *A.* or *J. S.* to ſet the time of the purchaſe; and an award of what cannot be certainly done, is not a certain determination. 1 *Bac. Abr.* 142. 1 *Roll. Abr.* 264.

The award ought to be equal and mutually ſatisfactory.

Awards muſt not be on one ſide only; this muſt be underſtood thus; That all controverſies being between two parties, that which is awarded to be done to one, muſt be an advantage to both, ſo as to end the controverſy, and diſcharge one as well as give ſatisfaction to the other, for if it doth not, it is manifeſtly unjuſt; and therefore whenever it appears to the court that, notwithſtanding the award, the thing remains a duty as before, and is not diſcharged, that apparently is an award on one ſide, and conſequently is void; not that where one party is by the award to have ſomething paid him, or the like, and not the other, that that award ſhould be naught; for perhaps nothing may be due to him, and he might be the only treſpaſſer in the caſe. 1 *Rol. Abr.* 253. 8 *Co.* 98.

Thus in caſe of a treſpaſs ſubmitted, the arbitrators award that one ſhall pay the other 3 *l.* this is void, becauſe only on one ſide; for it is not ſaid for what, and ſo the treſpaſs is not diſcharged; and then the other party hath no advantage by the award; but if it were awarded *de & ſuper præmiſſis*, it would be well enough; likewiſe if the award had been, that he ſhall pay 3 *l.* for a treſpaſs, it had been good, and yet one only was to do an act, but then the treſpaſs by that award had been diſcharged. 1 *Rol. Abr.* 253, 254. *Hob.* 49.

A. and *B.* ſubmit all actions had by *A.* againſt *B.* and all actions by *B.* againſt *A.* And the arbitrators award that *A.* ſhall go quit of all actions had by *B.* againſt him; this is naught, becauſe they ſay nothing as to the other actions. 1 *Rol. Abr.* 253.

The award muſt be of a thing lawful and poſſible.

If the arbitrators award a thing impoſſible *ex natura rei*, it is void; but if they award a thing which cannot be done, but is not in the nature of the act itſelf contradictory or repugnant, this may be a good award; for there is no conſtruction to be made of the award, but by the words thereof. 1 *Rol. Abr.* 248.

If an award be, that one ſhall make a feoffment to another of an acre, and immediately after deliver the charters, this is good, becauſe they may be delivered in the ſame inſtant. 1 *Rol. Abr.* 248.

An award that a ſtranger ſhall do an act is void, becauſe another in his natural freedom is not ſuppoſed within my power. 1 *Leon.* 316. 3 *Leon.* 62. *Hard.* 46.

An award to levy a fine is good; for though it is an act of the court, yet by the law and public juſtice of the kingdom, it is not to be refuſed

to any man; but if the award be to command the juſtices to do it, this is no good award; for the parties in effect pray leave to agree from the king himſelf, which is quite different from the nature of a command. 1 *Rol. Abr.* 249.

An award to pay ſo much *apud domum J. S.* good; for he is not bound to pay it in the houſe, but as near as he can to it, or it ſhall be intended a common inn; and if the party will not let him pay there, it has been ſaid that the endeavour is ſufficient; for they cannot award any thing that will make the party a treſpaſſer. 1 *Rol. Abr.* 249. *Cro. Car.* 226. 2 *Bulſ.* 39. 3 *Lev.* 153.

The award muſt be final.

An award that all ſuits ſhall ceaſe is a final award; ſo an award that one of the parties ſhall not ſue an obligation; for this amounts to an extinguiſhment of the debt. An award that a ſuit *in Chancery* ſhall be diſcuſſed, a final award; ſo if the arbitrators award a *retraxit*, and award that one ſhall not proſecute nor proceed in ſuch a term, ſeems to be good, but an award that one of the parties ſhall be nonſuit is not good, becauſe the party may begin again; ſo that each party ſhall diſcontinue their actions which they have againſt each other; for this is not a final determination. 1 *Bac. Abr.* 147.

A conditional award not good, becauſe not final to determine matters in difference; the ſame law where any thing is referred to the arbitrators future judgment or expoſition. 1 *Bac. Abr.* 147.

If the arbitrators award general releaſes within four days after the award, and if in ten days after the releaſes ſo made the party diſlike the award, upon payment of ten ſhillings, the award ſhall be diſcharged, here the award is good; and the proviſo to make void the award after ſuch releaſes, is altogether void and repugnant; for if the obligation be once forfeited by non-performance of the award, it can never be diſcharged by the award itſelf; but if the arbitrators award general releaſes within four days after the award; and if ten days after the award made the parties diſlike the award, *&c.* the award ſhall be void, this award is not good, becauſe not final and deciſive; for the parties may diſlike the award within the four days. 1 *Bac. Abr.* 147.

If the arbitrators award that *A.* ſhall beg *B.*'s pardon in ſuch manner, and ſuch place as *B.* ſhall appoint, as to this part the award is void; for the arbitrators ought to have made a final determination of the matter themſelves, and not to have left the manner and place of begging pardon, which in this kind of ſatisfaction makes the moſt conſiderable part, to the judgment of *B.* 1 *Bac. Abr.* 147.

When the arbitrators award a thing not ſubmitted, with a reſervation to themſelves of a future power of judging of the matter, and they award a thing within the ſubmiſſion, this is good for things within the ſubmiſſion; for as to that it is final, and void for the reſidue. 1 *Bac. Abr.* 147.

If they arbitrate that all controverſies ſhall ceaſe, except that concerning one bond, this is final; for as to the bond they arbitrate that it ſhall continue in force. 1 *Bac. Abr.* 147.

In an action of treſpaſs for an aſſault, battery, and falſe impriſonment, an award (made pending the action) being pleaded to this action, and a *tender* of the ſum awarded; the plaintiff demurred. The award (which was made upon a ſubmiſſion of all diſputes, *&c.*) was in theſe words,— "Whereas there has been a ſuit at law between the parties, that has run to a great expence on both ſides; and it being left to me to make an end of it; I determine That they ſhall each of them pay their own charges at law; and that the defendant pay the plaintiff five ſhillings, for his making the firſt breach in the law." Mr. *Anguiſh pro quer'* objected to the *award*, as being 1ſt, *Uncertain*; 2dly, *Not final.* Firſt.—It is *uncertain.* The ſubmiſſion is of *ſeveral* matters: and the award does not at all ſhew, *which* of them it means to determine. 1 *Ro. Abr.* 242. Letter *B. pl.* 1. 252. *pl.* 10. And an averment without a fact to ſupport it is of no avail. 1 *Ld. Raym.* 246. in the caſe of *Bacon* v. *Dubarry*, the 4th reſolution is expreſsly ſo. This is an action of treſpaſs. The ſubmiſſion is of *all* treſpaſſes. And the award does not diſtinguiſh *what* treſpaſſes it determines. 1 *Ro. Abr.* 251. Letter 1. *pl.* 1. and *pl.* 3. and the caſe of *Maw* v. *Samuell* in *Popham* 134. and 2 *Ro. Rep.* 1; the caſe of *Bacon* v. *Dubarry* (before cited.) The 3d reſolution ſays, "That the award was void for the uncertainty, without releaſes." Now *here* are *no* releaſes. Each is to pay their own charges: and the defendant is awarded to pay to the plaintiff 5 *s.* for his (the defendant's) having been guilty of the firſt breach of the law. The injury complained of was aſſault, battery, and falſe impriſonment. And here is no ſatisfaction awarded for the injury. 1 *Ld. Raym.* 247. The caſe of *Freeman* v. *Bernard.* Second point—'Tis *not final.* Which it ought to be. An award muſt be *final.* But this award was made pending the action: And it does not put any end to it, at all. Under this head, He cited 1 *Ro. Abr.* 252. *pl.* 16, 17. [But one of theſe is marked by the abridger, "*Dubitatur*": The other "*Contra* 15 *H.* 7. 22."] Alſo 2 *Strange* 1024. The caſe of *Tipping* v. *Smith*: Where the award was held ill; being uncertain, and not final. And *Cro. Eliz.* 904. The caſe of *Colſton* v. *Harris*: Where the award was holden void; becauſe nothing was awarded to the defendant, nor to be free from the ſuits: So no advantage to him.

Awards are *now* conſidered with leſs ſtrictneſs than formerly; yet they muſt be certain and final. 1 Bur. Rep. 274. Eaſt. 30 Geo. 2. Hawkins v. Colebough.

Mr. *Caldecot contra pro def.*' This award is pleaded by conſent of the plaintiff, and by leave of the court. And though pleaded as being made pending the action, *viz.* between the action brought and the plea pleaded, yet the court will determine upon the mere validity of it. 1ſt, It does appear upon what particular ſuit the award was. The generality of the ſubmiſſion is not inconſiſtent with the particularity of the award. 8 *Rep.* 98. *b.* *Baſpole*'s caſe. [2d reſolution.] This ſhall be taken to be the *whole* matter depending between the parties: And *no other* ſuit than this appears to have been depending between the parties. The caſe of *Bacon* v. *Dubarry*, in 1 *Ld. Raym.* 246. is not like or ſimilar to the preſent caſe. *After payment* made or tendered, the action of treſpaſs is *diſcharged. Hob.* 49. The caſe of *Nicholls* v. *Grunnion* is expreſsly

ſo. [The words are " For a *ſatisfaction* implies a diſcharge."] The preſent award (which was made by a *cobler)* recites that there was ſuch a ſuit; and that it being left to him to make an end of the ſaid ſuit, he determined as follows, *viz.* " That the ſaid *J. H.* and *J. C.* ſhould each of them *pay their own coſts and charges at law*; and that the ſaid *J. C.* ſhould *pay the ſaid J. S. 5 ſhillings for his making the firſt breach in the law.*" And this may be pleaded in bar, in another action. The arbitrator certainly *intended* to make an end of this ſuit depending between the parties; and thought *5 s. adequate to the injury.* Mr. *Anguiſh* in reply—Notwithſtanding the conſent " to plead this award in bar," Yet all objections to the award itſelf are ſtill open.

This is *not ſhewn* to be the *only* matter between them: And *non conſtat* that the award was made concerning this *particular* action. I agree that *payment* diſcharges the treſpaſs. But then it ought to appear that the payment was in ſatisfaction of the ſame *treſpaſs*; which does not appear in this caſe.

Lord *Mansfield:*—The queſtion is whether this be a *good award.* Awards are now conſidered with greater latitude, and leſs ſtrictneſs than they were formerly. And 'tis right that they ſhould be liberally conſtrued, becauſe they are made by judges of the parties own chooſing. And this is often, (as it is here,) in caſes of ſmall conſequence, where the play is not worth the candle. Indeed they muſt have theſe two properties, to be *certain*, and *final.* But the certainty may be judged of according to a common intent, and conſiſtent with fair and *probable preſumption.* This ſubmiſſion is, in general terms, " of *all* actions, controverſies and ſuits between them." The arbitrator recites one; referring to the ſubmiſſion, as authoriſing him to determine it: And it appears that *this* ſuit *was depending* between the parties. And the parties have *not deſired to be heard* upon any more than *this one.* Therefore there is *no probable preſumption* of any *other.* 2dly, As to its being *final*—It ſeems to be a reaſonable and fair award. The arbitrator, plainly, thought it a mere trifle; and ſeems to have thought *both* parties to have been in the wrong; and therefore awarded each to ſtand by his own coſts. And the *5 s.* awarded to be paid, is plainly in *ſatisfaction* of this *ſame* action; and therefore is a *diſcharge* of it, being paid or tendered. And he declared againſt critical niceties, in ſcanning *awards* made by judges of the parties *own chooſing*, in order to the determination of diſputes between them. Therefore he was clear, that the judgment ought to be for the defendant.

Mr. juſt. *Deniſon* concurred—The ſubmiſſion is *general:* The arbitration is alledged to be " *de et ſuper* præmiſſis"; and it *does not appear* that *any thing elſe* was before the arbitrator. It's plain that *this* matter was ſubmitted: and we have no reaſon to *preſume* " that there was any other. And it is *ſufficiently final*; it is to pay *5 s.* for having been guilty of the firſt breach of the law. Therefore it is the *ſame*, as if it had ſaid " in ſatisfaction," Therefore it is mutual and final. And *awards* ought to be conſtrued *liberally* and *favourably.* Mr. juſtice *Foſter* concurred, for the reaſons already given. Judgment for the defendant.

After

After an unſucceſsful motion, made on the part of the defendant, " to ſet aſide an award;" and an equally unſucceſsful one, made on the part of the plaintiff, " to enforce it by an attachment for non-performance;" The plaintiff found himſelf obliged to have recourſe to his *action* againſt the defendant upon it. And now upon an action of debt brought by him on this award, reciting that in an action of aſſumpſit, the parties, at the trial, had ſubmitted *the* matters in difference *in the* ſaid cauſe, to certain arbitrators, *&c.* ſo as they ſhould publiſh their award in writing concerning the premiſſes, before, *&c.* And that they accordingly did publiſh their award in writing, *&c.* And awarded " that the defendant *Nicholſon* ſhould pay to the plaintiff *Perry* 48 *l.* 11 *s.* 4 *d.* in full payment, diſcharge, and ſatisfaction of all moneys whatſoever, or any ways due or owing unto *Perry*, by *Nicholſon*, at the time of commencing the ſaid action; and that all actions depending between them for *any* matter, cauſe or thing *whatſoever*, ariſing before or at the time of referring, ſhould *from thenceforth ceaſe*; and that upon payment of that ſum, they ſhould within two days after the *taxation* of coſts in the action, and payment thereof to *Perry*, ſeal and execute to each other, *general* releaſes of all matters in difference in the ſaid cauſe." Then the plaintiff avers that there was, at the commencement of the action, or at the time of reference, *no other money* whatſoever any ways due to him the ſaid plaintiff *Perry* from *Nicholſon*, but the matter in difference in the ſaid cauſe; and that *no other action* was depending between them; and that the coſts were *taxed* at 28 *l.* The defendant pleads " that no ſuch award was made." Replication - " that there was ſuch an award, *&c.*" And iſſue thereupon. The plaintiff gave in evidence, an award in writing, *indented*, under the hands and ſeals of the ſaid arbitrators, named in his declaration and replication, with the following *variations* from, and additions to the award ſet forth in the declaration,—*viz.* There was in the declaration, 1ſt, An *omiſſion* (after the award " to pay, *&c.*) of theſe following words:—" That *Nicholſon* at the ſame time *deliver up* to *Perry* a *promiſſory note* of *Perry*'s payable to *Nicholſon* or order, for 5 *l.* 7 *s. to be cancelled.*" 2dly, A *miſrepreſentation* of the releaſe: Which is " that they ſhould execute MUTUAL *and general* releaſes of all actions, *&c.* debts, *&c.* for any matter, cauſe, or thing whatſoever, from the beginning of the world *unto the day of the date* hereof." 3dly, The award produced in evidence, is by deed *indented*, *under hand and ſeal:* Whereas the award declared upon is only an award " in writing," merely. Upon this evidence, there was a verdict for the plaintiff, ſubject to the opinion of the court, on this queſtion,—" Whether there be MATERIAL *variances* between the award declared upon and the award given in evidence."

In an action of debt upon the award itſelf, the plaintiff need not ſhew forth ſo much as he muſt have done, if he had brought it upon the arbitration bond. 1 Bur. Rep. 278. Eaſt. 30 Geo. 2. Perry v. Nicholſon.

Mr. ſerjeant HEWITT,—*pro quer.*' This action is an action of debt ON *the* AWARD itſelf; not an action of debt *on* the arbitration BOND: And on *ſuch* an action, no more needs be ſet out, than is material, and enough *to intitle the plaintiff* to his demand. 1 *Leon.* 72. the caſe of *Smith* v. *Kirfoot.* 1 *Salk.* 72. the caſe of *Foreland* v. *Marygold.* Both which caſes

are

are expreſly ſo. Another rule concerning awards is, that the *generality of the words* of them may be *reſtrained*, ſo as to be conſtrued to amount to no more than they ought to amount to. One way of doing this, is by *averment* connecting the award with the ſubmiſſion: As it is ſaid in the caſe in *Aleyn* 51, 52. *Roſe* v. *Spark* [firſt point,] "That the words *de præmiſſis* have been newly uſed in pleading awards: in order properly to apply the general words proportionable to the things ſubmitted." Another way of doing this, is by pleading them according to their *legal operation*. Another way of reſtraining the generality of words is by *intendment of law*: As was done in 1 *Salk.* 74. *Simon* v. *Gavil.* Another way is by *pleading the matter*; (which is the proper way for the defendant to take advantage of it;) as in *Moore* 885, N°. 1242. The caſe of *Lee* v. *Paine*. Another way is, that an award may be *good in part*, and *bad in part*; if relative to diſtinct things. To apply theſe poſitions.—Here are four things awarded: which, it is true, are not all particularly ſet forth. But ALL that is NECESSARY *to* THIS *ſuit*, is ſet forth: The *other* things are not relative *to it*. And here is an *averment* "That *no* other thing was in diſpute." The queſtion is, "Whether this award produced in evidence proves the declaration. Now all that is material in the declaration, upon *this* action of debt upon the award, is the award of the 48 *l.* and the 28 *l.* coſts. So that it is ſufficient to prove the declaration.

Mr. ANGUISH *contra pro. def.* 1ſt, Here is an *omiſſion* of that part which obliges the defendant *Nicholſon* to deliver up a note: Which note compoſes part of the ſum, and was in conſideration to make up the 48 *l.* To ſuppoſe it otherwiſe, is inconſiſtent: Becauſe, otherwiſe they would not have ordered it to be given up. He cited 2 *Lev.* 235. The caſe of *Adams* and *Statham:* Where an omiſſion vitiated the award.

LORD MANSFIELD, after ſtating the caſe, ſaid that nothing was clearer, than that in an action of debt UPON *an* AWARD, a man has *no* need to *ſtate in his declaratioon any more* of the award, than ſupports his caſe. If there be any thing by way of condition precedent to the payment of the money, the *defendant* may *ſet it out* in pleading. This has been the law, ſo long ago as from the time of the Regiſter: where there is a writ which ſets forth only ſo much as is neceſſary. [V. *Regiſter* 111.] Then with regard to the releaſe.—The court will *intend* that the *releaſe* ſhall *extend only to the matter under the ſubmiſſion*. Beſides here they have averred "That there was *no other* matter in variance." Therefore I think there is no *material variance* between the declaration and the evidence.

Mr. Juſtice DENISON—was clearly of the ſame opinion: which he declared to the following effect. The queſtion is "Whether the award given in evidence is ſufficient to ſupport the award ſet forth in the declaration." Now nothing is claimed by *this* action, *but* the *money*. And the queſtion is, whether it was neceſſary, in this action, to ſet forth any thing MORE than ſupported his claim to recover, and *ſhewed his right to this money*. It has been ſettled that in actions *upon* AWARDS (which are no ſpecialties,) there is *no* occaſion to ſet forth the *whole* award. The plaintiff *needs not* ſhew any thing *more than* what is neceſſary

neceſſary to ſupport that *particular* claim; and to intitle him to the *thing*; and if the defendant will *impeach* the award for any thing, *that* is to come on HIS part. 1 *Leon.* 72. *Smith* and *Kirfoot*'s caſe is expreſly ſo reſolved. *Littleton's Rep.* 312, 313. *Leak* v. *Butler*, is a like reſolution: Where the form of declaring is ſaid to be taken from a writ in the *Regiſter* 111. And this *diſtinction* between debt upon the *award* itſelf, and debt upon the arbitration bond, was admitted in 1 *Salk.* 72. the caſe of *Foreland* and *Marygold:* which was an action of debt upon *bond* to perform an award. And 1 Lord *Raym.* 715. *Foreland* and *Hornigold* is the ſame caſe: Where alſo it apppears to have been an action of debt upon the *bond.* Here, the award is, "That *Nicholſon* ſhall pay the money, and *Perry* deliver up the note." And this is an action of debt brought by *Perry*, upon *this* AWARD, for the *money.* It would, as I have already ſaid, have been a quite different caſe, if it had been an action *upon the arbitration* BOND. But it is *here* good, even though on the mere face of the declaration it ſhould appear *as a bad* award, by appearing thereupon, and as there ſet forth, as if it were only an award on one ſide. For the plaintiff, in *this* action upon the award itſelf, needed only to ſhew *ſuch* part as he grounded his action upon. Then as to the *Releaſe.*—The award "of *general* releaſes," was *void, as to* OTHER matters not ſubmitted. Here nothing is ſubmitted, but in *this* particular action. And in an action upon the bond, "a releaſe as to *all matters under ſubmiſſion,*" would be a good plea; though the award be an award of "*general* releaſes." But here it is *expreſly averred*, "that there *were* NO OTHER matters in diſpute." However, there was no occaſion for that averment, becauſe we *would* NOT *have intended* "that there were any other."

Mr. Juſtice FOSTER was of the ſame opinion. He ſaid it was ſufficient in an action of debt *upon* the AWARD ITSELF, to ſet forth ſo much only as is neceſſary to ſupport the plaintiff's claim. The *other* part of the award, may, perhaps, *be performed.* He thought therefore, that the evidence well proved the declaration. *Per cur.* unanimouſly (Mr. Juſtice *Wilmot* abſent) Let the POSTEA be delivered to the PLAINTIFF.

Badgers.

BADGER is derived from the *French* bagage, baggage or luggage, and ſignifies a perſon who is licenſed to buy corn or other victuals in one place, and carry them to another. *Cowell. Termes de la ley.*

Stat. 5 & 6 *Ed.* 6. *c.* 14. [*A. D.* 1552. *Intituled*] "An act againſt regrators, foreſtallers, and ingroſſers." 5 & 6 Ed. 6. c. 14.

"Albeit divers good ſtatutes heretofore have been made againſt foreſtallers of merchandiſes and victuals, yet for that good laws and ſtatutes Who ſhall be judged a fore-

againſt

ſtaller, who a regrator, and who an ingroſſer; and the puniſhment of them. 25 Ed. 3. Stat. 4. c 3. 2 R 2. Stat. 1. c. 2. repealed as to buying ſea-fiſh unſalted, &c. by 5 Eliz. c. 5. S. 11. 2 Bulſt. 317. Godbolt 131. pl. 148. 3 Inſt. 895, 196. 12 Co. 99. 1 Roll. 11, 194, 421. 2 Roll. 92, 400. Stile 190. Moor 595, pl. 810. Cro. Jac. 214. Cro. Car. 231, 314. 2 Leon. 39. Comberb. 3. 1 Hawk. P. C. 237.

againſt regrators and ingroſſers of the ſame things have not been heretofore ſufficiently made and provided, and alſo for that it hath not been perfectly known what perſon ſhould be taken for a foreſtaller, regrator or ingroſſer, the ſaid ſtatutes have not taken good effect, according to the minds of the makers thereof: (2) Therefore be it enacted and declared by the king our ſovereign lord, with the aſſent of the lords ſpiritual and temporal, and the commons in this preſent parliament aſſembled, and by the authority of the ſame, that whatſoever perſon or perſons, that after the firſt day of *May* next coming ſhall buy, or cauſe to be bought, any merchandiſe, victual, or any other thing whatſoever, coming by land or by water toward any market or fair to be ſold in the ſame, or coming toward any city, port, haven, creek or road of this realm or *Wales*, from any parts beyond the ſea to be ſold; (3) or make any bargain, contract or promiſe for the having or buying of the ſame, or any part thereof, ſo coming as is aforeſaid, before the ſaid merchandiſe, victuals, or other things, ſhall be in the market, fair, city, port, haven, creek or road, ready to be ſold; (4) or ſhall make any motion by word, letter, meſſuage or otherwiſe, to any perſon or perſons, for the inhancing of the price, or dearer ſelling of any thing or things above-mentioned; (5) or elſe diſſwade, move or ſtir any perſon or perſons coming to the market or the fair, to abſtain or forbear to bring or convey any of the things above rehearſed, to any market, fair, city, port or haven, creek or road to be ſold, as is aforeſaid, (6) ſhall be deemed and taken, and adjudged for a foreſtaller.

Sect. 2. "Further be it enacted and declared by the authority aforeſaid, That whatſoever perſon or perſons, that after the ſaid firſt day of *May* ſhall by any means regrate, obtain, or get into his or their hands or poſſeſſion, in a fair or market, any corn, wine, fiſh, butter, cheeſe, candles, tallow, ſheep, lambs, calves, ſwine, pigs, geeſe, capons, hens, chickens, pigeons, conies, or other dead victual whatſoever, that ſhall be brought to any fair or market within this realm or *Wales* to be ſold, and do ſell the ſame again in any fair or market holden or kept in the ſame place, or in any other fair or market within four miles thereof, ſhall be accepted, reputed and taken for a regrator or regrators.

Explained by 21 Ja. 1. c. 22. S. 6. Jones 157. Bridgm. 5, 49.

Sect. 3. "And be it alſo enacted and declared by the authority aforeſaid, That whatſoever perſon or perſons, that after the ſaid firſt day of *May* ſhall ingroſs or get into his or their hands, by buying, contracting or promiſe-taking, other than by demiſe, grant, or leaſe of land or tithe, any corn growing in the fields, or any other corn or grain, butter, cheeſe, fiſh, or other dead victuals whatſoever, within the realm of *England*, to the intent to ſell the ſame again, ſhall be accepted, reputed and taken an unlawful ingroſſer or ingroſſers.

The puniſhment of the offenders aforeſaid for the firſt offence.

Sect. 4. "And if any perſon or perſons ſhall, at any time after the ſaid firſt day of *May*, offend in any of the things before recited, and being thereof duly convicted and attainted by the laws of this realm, or after the form hereafter mentioned, ſhall for this or their firſt offence have or ſuffer impriſonment for the ſpace of two months without bail or mainpriſe,

(2) and ſhall alſo loſe and forfeit the value of the goods, cattle and victual ſo by him or them bought or had.

Sect. 5. "And if any perſon, lawfully convicted or attainted of or for any the offences aboveſaid, be thereof eftſoons lawfully convicted or attainted, that then every perſon or perſons ſo offending ſhall have and ſuffer for his or their ſaid offence, impriſonment by the ſpace of one half year, without bail or mainpriſe, and ſhall loſe double the value of all the goods, cattle and victual ſo by him bought or had, as is aforeſaid. The puniſhment for the ſecond offence.

Sect. 6. "And if any perſon, being lawfully twice convicted or attainted of or for any of the ſaid offences, ſhall eftſoons offend the third time, and be thereof lawfully convicted or attainted, that then every ſuch perſon for the ſaid third offence ſhall be ſet on the pillory in the city, town or place where he ſhall then dwell and inhabit, and loſe and forfeit all the goods and cattle that he or they have to their own uſe, and alſo be committed to priſon, there to remain during the king's majeſty's pleaſure." The puniſhment for the third offence.

Sect. 7. "Provided alway, and it is enacted and declared by the authority aforeſaid, That the buying of any ſuch barley, bigg or oats, as any perſon or perſons (not foreſtalling) ſhall buy to convert into malt or oatmeal, in his or their own houſe or houſes, and ſo ſhall be converted indeed, (2) or the buying of any ſuch thing by any ſuch fiſhmonger, butcher, or poulterer, as concern his or their own faculty, craft or myſtery, (otherwiſe than by foreſtalling) which ſhall ſell the ſame again upon reaſonable prices by retail; (3) or the taking of any cattle, corn, grain, butter, cheeſe, or any other thing above mentioned, reſerved without fraud or covin upon leaſe for term of life or lives, year or years, heretofore made or hereafter to be made; (4) or the buying of any wine or other dead victual above mentioned, being apt and meet for man's ſuſtenance, by any inn-holder or other victualler, to ſell the ſame by retail within his houſe, or to any of his neighbours for their ſuſtenance, for reaſonable prices; (5) or the buying of any dried or ſalted fiſh, herring or ſprats (not foreſtalled) and ſold for reaſonable prices; (6) or the buying of any corn, fiſh, butter, or cheeſe, by any ſuch badger, lader, kidder or carrier, as ſhall be aſſigned and allowed to that office or doing, by three juſtices of the peace of the county where the ſaid badger, lader, kidder or carrier ſhall dwell, which ſhall ſell or deliver in open fair or market, (7) or to any other victualler, or to any other perſon or perſons, for the proviſion of his or their houſe or houſes, all ſuch corn, grain, butter and cheeſe as any ſuch perſon ſhall buy or cauſe to be bought, and that within one month next after he ſhall ſo buy any ſuch corn, grain, butter or cheeſe, ſo that the ſame ſhall be bought without foreſtalling; (8) or elſe that any common proviſion made, or hereafter to be made without fraud or covin, by any perſon or perſons, of any of the things aboveſaid, for any city, borough or town corporate, or for proviſion of victualling of any ſhip, caſtle or fort within the king's dominions, without foreſtalling, which ſhall be imployed only to that uſe and purpoſe; (9) or the buying and providing of any of the victuals above mentioned, neceſſary and requiſite for the furniture and proviſion of the inhabitants of *Calice*, *Guiſnes*, and other the marches of the ſame, or of the town of *Berwick*, *Holy Iſland*, or the To what retailing or other acts this ſtatute doth not extend. Godbolt 144. pl. 180. 1 Roll. 135. Badger, &c. to be allowed by the quarter-ſeſſions &c. by 5 Eliz. c. 12. ſ. 4.

the marches of *England* againſt *Scotland*, which without fraud or covin ſhall be tranſported and conveyed as ſoon as wind and weather may ſerve, to ſuch of the places aforeſaid for the which the ſame ſhall be provided, (10) ſhall not be in any wiſe deemed, adjudged or taken any offence contrary to this act.

Changing of feed-corn. 2 Brownl. 108.

Sect. 8. " And it is alſo further enacted by the authority aforeſaid, That if any perſon or perſons after the ſaid firſt day of *May* next coming, having ſufficient corn, and grain for the proviſion of his or their own houſe or houſes, and ſowing of their grounds for one year, do buy any corn in any fair or market, for the change of his or their ſeed, and do not bring to the ſame fair or market the ſame day ſo much corn as he ſhall fortune to buy for his ſeed, and ſell the ſame, if he can, as the price of corn then goeth in the ſaid market or fair, that then every ſuch perſon or perſons ſo buying corn for ſeed, ſhall forfeit and loſe the double value of the corn ſo bought.

No perſon may ſell his cattle within five weeks after be bought them. Carthew 465. 1 Salk. 372.

Sect. 9. " Or if any perſon or perſons after the ſaid firſt day of *May* ſhall buy any manner of oxen, ronts, ſteers, kine, heifers, calves, ſheep, lambs, goats, or kids, living, and ſell the ſame again alive, unleſs he or they do keep and feed the ſame by the ſpace of five weeks in his or their own houſes, ground, ferm-ground, or elſe in ſuch ground or grounds where he or they have the herbage or common of paſture by grant or preſcription, That then every perſon or perſons ſo buying and ſelling again, ſhall loſe the double value of the cattle or things ſo bought and ſold again: (2) the one moiety of all which forfeitures afore rehearſed ſhall be to the king, and the other moiety to him or them that will ſue for the ſame, in any of the king's courts of record, by bill, plaint, action of debt, or information; in the which bill, plaint, action or information, no wager of law, eſſoin or protection ſhall be admitted.

The juſtices of peace may inquire, hear and determine the offences aforeſaid.

Sect. 10. " Be it alſo further enacted by the authority aforeſaid, That the juſtices of the peace in every county within this realm or *Wales*, at their quarter-ſeſſions, ſhall have full power and authority by virtue of this act to enquire, hear and determine all and every the defaults and offences, perpetrated, committed or done contrary to this act, within the county where any ſuch ſeſſions ſhall be kept, by inquiſition, preſentment, bill, or information before them exhibited, and by examination of two lawful witneſſes, or by any of the ſame ways or means, by the diſcretion of the ſaid juſtices, (2) and to make proceſs thereupon, as though they were indicted before them by inquiſition, or by verdict of twelve men or more; (3) and upon the conviction of the offender by information or ſuit of any other than the king, to make extracts of the one moiety of the forfeitures to be levied to the king's uſe, as they uſed to do of other fines, iſſues and amerciaments grown in the ſeſſions of peace, (4) and to award execution of the other moiety for the complainant or informer againſt the offender, by *fieri facias* or *capias*, as the king's juſtices at *Weſtminſter* may do and uſe to do: (5) and if any ſuch conviction or attainder ſhall hereafter happen to be at the king's ſuit only, that then the whole forfeitures to be extracted and levied to the king's uſe only."

Sect.

Sect. 11. "And it is further enacted by the authority aforesaid, that whatsoever person shall at any time hereafter be punished by virtue of this act, for any thing mentioned in this act; that then the same person shall not otherwise be vexed, troubled, sued, or put to any pain or punishment for that thing wherefore he or they shall have been so punished." — Bu tone punishment for one offence.

Sect. 12. "Provided always, and it is enacted by the authority aforesaid, That it shall be lawful to every person or persons, which shall be assigned and allowed by three justices of the peace of the county where he shall dwell, thereunto, to buy (otherwise than by forestalling) corn, grain or cattle, to be transported or carried by water from any port or place within this realm or *Wales*, unto any other port or place within the said realm or dominions, if he or they shall without fraud or covin ship or embark within forty days next after he or they shall have bought the same, or taken covenant or promise for the buying thereof, and with such expedition and diligence as wind and weather will serve to carry and transport the same to such port or place, as his or their cockets shall declare, and there do disbark, unlade and sell the same, and do bring a true certificate thereof from one justice of peace of the county, or mayor or bailiff of the town corporate where the same shall be unladen, and also of the customer of the port where such unlading shall be, of the place and day where the said corn or cattle shall be disbarked, unladen and sold, to be directed unto the customer and comptroller of the port where the same were embarked; any thing mentioned in this act to the contrary notwithstanding." — Transporting corn, &c. from one port to another by licences of the justices.

Sect. 13. "And over that, That at all times hereafter, when wheat shall be commonly at the price of 6*s.* 8*d.* the quarter, or under, (2) malt and barley at 3*s.* 4*d.* the quarter, or under, (3) oats, or oats malted, at the price of 2*s.* the quarter, or under, (4) pease or beans at the price of 4*s.* the quarter, or under, (5) and rye or misteline at the price of 5*s.* the quarter, or under; (6) (all which quarters shall be intended to be of *London* measure) (7) that then it shall be lawful to every person and persons (not forestalling) to buy, engross and keep in his or their granaries or houses, such corn of the kinds aforesaid, as without fraud or covin shall be bought at or under the prices afore expressed; any thing in this act to the contrary notwithstanding. — Every man may ingross corn being at these prices.

Sect. 14. "Provided always, and be it enacted by the authority aforesaid, That this act, or any thing therein contained, extend not to charge any person or persons for any the offences above mentioned, unless he or they be sued for the same within two years next after such offence done or committed. This act to endure until the end of the next parliament. — Within what Time the offender must be sued.

Sect. 15. "Provided always, and be it enacted by the authority aforesaid, That it shall be lawful to all and every of the king's majesty's subjects now dwelling or inhabiting, or that hereafter shall dwell or inhabit within one mile of the main sea, to buy all manner of fish, fresh or (salted, not forestalling the same) and to sell the same again at reasonable prices; this act, or any thing therein contained, to the contrary in any wise notwithstanding." — Regrating of Fresh fish. 4 Mod. 102.

Drovers of cattle licenſed by the juſtices may buy and ſell again. Drovers to be allowed by the quarter ſeſſions, by 5 El. c. 12. ſ. 4.

Sect. 16. "Provided alſo, and be it enacted by the authority aforeſaid, That it ſhall be lawful to all and every perſon and perſons, known for a common drover or drovers, being licenſed, authoriſed and allowed in writing by three juſtices of the peace, whereof one to be of the *quorum*, of the county or counties where the ſame drover or dovers ſhall be moſt abiding and dwelling, to buy cattle in any ſuch ſhire or counties where drovers have been wont in times paſt accuſtomably to buy cattle at their free liberty and pleaſure, and to ſell the ſame, as is aforeſaid, at reaſonable prices in common fairs and markets diſtant from the place or places where he or they ſhall buy the ſame, forty miles at the leaſt, ſo that the ſame cattle be not bought by way of foreſtalling; this act, or any thing therein contained to the contrary in any wiſe notwithſtanding.

Sect. 17. "Provided always, That ſuch licence of juſtices of peace ſhall not indure above one year, unleſs the ſame be yearly renewed by ſo many juſtices as is aforeſaid. *Made perpetual by* 13 *Eliz. c.* 25.

5 El. c. 12.

Stat. 5 *Eliz. c.* 12. [*A. D.* 1562. Intituled.] "An act touching badgers of corn, and drovers of cattle to be licenſed."

Who ſhall be accounted an ingroſſer by the ſtatute of 5 & 6 Ed. 6. c. 14.

"Where in the ſeſſion of parliament holden upon prorogation at *Weſtminſter* the three and twentieth day of *January* in the fifth year of the reign of our late ſovereign lord king *Edward* the ſixth, amongſt other things it was enacted, That whatſoever perſon or perſons, after the firſt day of *May* then next enſuing, ſhould engroſs or get into his or their hands, by buying, contracting, or promiſe-taking (other than by demiſe, grant, or leaſe of land, or tithes) any corn growing in the fields, or any other corn or grain, butter, cheeſe, fiſh, or other dead victuals whatſoever, within the realm of *England*, to the intent to ſell the ſame again, ſhall be accepted, reputed, and taken an unlawful engroſſer or engroſſers; (2) with a proviſo, and ordinance contained in the ſame act, That it ſhould be lawful to every perſon or perſons being a common badger, kidder, lader, or carrier which ſhall be licenſed, aſſigned and allowed thereunto by three juſtices of the peace of the county where the ſaid badger, lader, kidder or carrier ſhall dwell, which ſhall ſell or deliver in open fair or market, or to any other victualler, or to any other perſon or perſons for the proviſion of his or their houſe or houſes, all ſuch corn, butter, or cheeſe, as any ſuch perſon or perſons ſhall buy or cauſe to be bought, and that within one month next after he or they ſhall ſo buy any ſuch corn, grain, butter, or cheeſe, ſo that the ſame ſhall be bought without foreſtalling, ſhall not be in any wiſe deemed, adjudged or taken any offence contrary to the ſaid act.

A proviſo for a badger, carrier, &c. licenſed.

A proviſo for a drover of cattle, or for buying of corn to be tranſported from one port to another.

Sect. 2. "And where alſo it is provided and enacted by the ſame act of parliament, That it ſhall be lawful to all and every perſon and perſons known for a common drover or drovers, being licenſed, authoriſed and allowed in writing by three juſtices of peace, whereof one to be of the *quorum*, of the county or counties where the ſame drover or drovers ſhall be moſt abiding and dwelling, to buy cattle in ſuch ſhires or counties where drovers have been wont in times paſt accuſtomarily to buy cattle, at their

their free liberty and pleaſure, and to ſell the ſame again; (2) and that it ſhall be lawful to every perſon and perſons which ſhall be aſſigned and allowed by three juſtices of the peace of the county where he ſhall dwell, to buy (otherwiſe than by foreſtalling) corn, grain, or cattle, to be tranſported or carried by water from any port or place within this realm or *Wales*, unto any other port or place within the ſaid realm or dominions, as in the ſaid act, amongſt other things, doth appear."

Sect. 3. "Since the making of which act, ſuch a great number of perſons ſeeking only to live eaſily, and to leave their honeſt labour, have and do daily ſeek to be allowed and licenſed to the ſaid offices or doings, being moſt unfit and unmeet for thoſe purpoſes, and alſo very hurtful to the commonwealth of this realm, as well by the inhauncing of prices of corn and grain, and other the ſaid victuals, as alſo by the diminiſhing of the number of good and neceſſary huſbandmen; which ſaid number of drovers of cattle, and badgers, laders, kidders, and carriers of corn and grain, are many times without good orders, and due conſideration, aſſigned and allowed thereunto, to the great prejudice of the commonwealth."

The inconveniences enſuing the number of drovers of cattle, and badgers, &c. of corn and other victuals.

Sect. 4. "In conſideration whereof, Be it enacted by the queen our ſovereing lady, with the aſſent of the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That no drover of cattle, badger, ladder, kider, carrier, buyer or tranſporter of corn or grain, butter and cheeſe, be from and after the feaſt of *Eaſter* next after the firſt day of this preſent parliament, licenſed, admitted, aſſigned or allowed to thoſe offices or doings, or to any of them, but only in the general and open quarter-ſeſſions of the peace, to be holden in the ſhire where ſuch perſon or perſons ſo to be admitted, aſſigned or allowed, doth or ſhall dwell, and hath or ſhall have dwelled there by the ſpace of three years next before the teſte of his ſaid licence. (2) And that no perſon or perſons, after the firſt day of *May* next coming, be admitted to the ſaid offices or doings, or to any of them, but ſuch only as be or have been married men, and ſhall be, at the time of ſuch licence to be granted, houſholders, and not houſhold ſervants, nor retainers to any perſon or perſons, and of the age of thirty years at the leaſt: (3) and that all licences being made and granted, as is aboveſaid, ſhall have continuance and be good only for one year next after the date hereof, and for no more nor longer time.

To what kind of perſons, and at what places only, licence ſhall be granted to be badgers, drovers, &c. Savill 58.

Sect. 5. "Which ſaid licences, and every of them, ſhall bear date of the day and place where the ſaid ſeſſions ſhall be holden, and ſhall be ſigned and ſealed with the proper hands and ſeals of three of the ſaid juſtices of the peace, being preſent at the ſame ſeſſions, at the leaſt; whereof one to be of the *quorum*; (2) upon pain that every perſon or perſons that ſhall take any licence contrary to this ordinance, to loſe and forfeit to our ſovereign lady the queen, her heirs and ſucceſſors, five pounds ſterling: (3) And that all licences made and granted, or hereafter to be made and granted, otherwiſe than is before expreſſed, ſhall from and after the ſaid firſt day of *May* next coming be void and of none effect.

The date of the licences, and the juſtices hands and ſeals.

Sect.

Bonds with ſureties ſhall be taken of drovers, carriers, &c. not to infringe this act.

Sect. 6. " And further, Be it enacted by the authority aforeſaid, That the juſtices of the peace, in the ſaid general and open ſeſſions, ſhall or may by their diſcretions, take bond and ſurety from time to time by recognizance, of ſuch as ſhall be admitted or allowed hereafter a common drover of cattle, badger, lader, kidder, carrier or buyer of corn, grain, butter or cheeſe, that they or any of them ſhall not by colour of his or their licence, foreſtal or ingroſs, or otherwiſe practiſe or do any act or thing contrary to the tenor and true meaning, or in defrauding the ſaid former eſtatute, or of any matter or thing therein contained: (2) All which licences, and every of them, and the ſaid recognizances, ſhall be made and written by the clerk of the peace of every county where ſuch licence ſhall be granted, or by his lawful deputy, and by none other perſon or perſons: (3) And every perſon that ſhall have any ſuch licence, ſhall pay to the clerk of the peace, or his deputy, for making thereof, twelve pence at the moſt; and for every recognizance in form aboveſaid, to be made and acknowledged, eight pence at the moſt; and for regiſtring of the ſame licence and recognizance, four pence at the moſt: (4) For which ſaid fee, the ſaid clerk, or his deputy, ſhall have and keep one regiſter-book, and therein ſhall regiſter and write all the names, ſurnames, and dwelling-places of ſuch as ſhall be licenſed, as aforeſaid, with a brief declaration or entry of the ſaid licence, and of the day, time and place where ſuch licence or licences ſhall be granted: (5) Which book or regiſter the ſaid clerk of the peace, or his deputy, ſhall have and bring to every ſeſſions, to the intent that it may appear what number of licences be and ſhall be from time to time granted, whereby the better conſideration may be had thereof.

The fees of the clerk of the peace.

None ſhall buy corn to ſell again without ſpecial licence.

Sect. 7. " Provided always, and be it further enacted by the authority aforeſaid, That no perſon or perſons, ſhall or may, by authority of any ſuch licence above-mentioned, buy any corn or grain out of open fair or market to ſell again, unleſs ſuch perſon and perſons ſhall be thereunto licenſed, and ſhall have ſpecial and expreſs words contained in ſuch licence or licences, that he or they may ſo do; upon pain to forfeit for every ſuch time that any ſuch perſon or perſons ſhall do to the contrary, five pounds: (3) The moiety of which forfeitures afore-rehearſed ſhall be to the queen our ſovereign lady, her heirs and ſucceſſors, and the other moiety to him or them that will ſue for the ſame in any of the queen's courts of record, by bill, plaint, action of debt or information, in the which bill, plaint, action or information, no wager of law, eſſoin or protection ſhall be admitted.

Who ſhall have the forfeitures.

Juſtices of peace in their ſeſſions ſhall enquire of, and determine theſe offences.

Sect. 8. " Be it alſo enacted by the authority aforeſaid, That the juſtices of peace in every county within this realm or *Wales*, at the quarter-ſeſſions, ſhall have full power and authority by virtue of this act, to enquire, hear and determine all and every the defaults and offences perpetrated, committed or done contrary to this act, within the county where any ſuch ſeſſions ſhall be kept, by inquiſition, preſentment, bill or information before them exhibited, and by examination of two lawful witneſſes, or by any of the ſame ways or means, by the diſcretion of the ſaid juſtices, and

to

to make proceſs thereupon, as though they were indicted before them by inquiſition, or by verdict of twelve men or more: (2) And upon the conviction of the offender, by information or ſuit of any other than the queen, to make extracts of the moiety of the forfeitures to be levied to the queen's uſe, as they uſe to do of other fines and amerciaments grown in the ſeſſions of peace, and to award execution of the other moiety for the complainant or informer againſt the offender, by *fieri facias* or *capias*, as the queen's juſtices at *Weſtminſter* may do, and uſe to do; (3) and if any ſuch conviction or attainder ſhall hereafter happen to be at the queen's ſuit only, and then the whole forfeitures to be extracted and levied to the queen's uſe only.

A city, &c. may appoint purveyors for their proviſion.

Sect. 9. "Provided always that this act, or any thing therein contained, ſhall not in any wiſe extend to the prejudice of the liberty of any city or town corporate, but that they and every of them ſhall and may lawfully aſſign and licenſe purveyors for the proviſion of the ſame city or town corporate, in ſuch manner and form as they might lawfully have done before the making of this act.

To the inhabitants of which counties this ſtatute doth not extend.

Sect. 10. "Provided further, that this act, nor any thing therein contained, ſhall be in any wiſe hurtful or prejudicial unto any the inhabitants within the counties of *Weſtmorland*, *Cumberland*, *Lancaſter*, *Cheſter* and *York*, or any of them, but that they may do as heretofore they have lawfully uſed to do; any thing in this preſent act to the contrary notwithſtanding."

13 Eliz. c. 25.

Stat. 13 *Eliz. c.* 25. [*A. D.* 1571. *intituled*, "An act for reviving and continuance of certain ſtatutes."] *ſect.* 1, 2, 3, 4, & 5. recite the ſaid act of 5 & 6 *Ed.* 6. *c.* 14. and four other acts.

Sect. 5. "All which acts were by ſundry acts of parliament continued in force and effect, until the end and diſſolution of the laſt parliament [8 *Eliz. A. D.* 1566.] of our ſovereign lady the queen's majeſty that now is, at which time the ſame ſeveral acts, and every of them were diſcontinued, and loſt their force and effects; which acts above-mentioned, and every of them, by proof and experience, have ſince the making of the ſame, been tried and found to be very neceſſary, beneficial and profitable for the commonwealth, and therefore are thought good to be made perpetual: Be it therefore enacted, "That the ſaid acts above remembred, and every of them, and *all* and *every* the branches, clauſes, and proviſions in them and every of them contained, ſhall be revived, and from henceforth remain and continue in force and effect for ever."

Sect. 20. "Provided always, and be it enacted by the authority aforeſaid, That no perſon or perſons ſhall be a buyer, badger, kidder, or carrier of corn, cattle, butter, cheeſe, and ſuch-like kind of victual, in none other manner nor form than is contained in a ſtatute made in the fifth year of the reign of our ſovereign lady queen *Elizabeth*, nor ſhall be any other ways admitted or licenſed to be a buyer, badger, kidder, or carrier, as is aforeſaid,

aforeſaid, than is mentioned and appointed by the ſaid ſtatute; any thing in *this*, or any other act heretofore to the contrary notwithſtanding."

For other matters, ſee Foreſtalling.

Bail.

BAIL, (*ballium*, from the French *bailler*, *tradere*, to deliver) is uſed in our common law for the freeing or ſetting at liberty of one arreſted or impriſoned upon any action, either civil or criminal, on ſurety taken for his appearance at a day and place certain. *Bract. lib. 3. tract. 2. c. 8. num. 8 & 9.* The reaſon why it is called *bail*, is becauſe by this means the party reſtrained is *delivered* into the hands of thoſe that bind themſelves for his forthcoming or appearance. *Cowell.*

Bail in criminal cauſes is regularly to be allowed in all ſuch caſes wherein it ſeems doubtful, whether the perſon accuſed be guilty of the offence or not; in which caſe, according to another general rule, it may be allowed and taken by that perſon who has cognizance of the crime, and therefore being judge of the offence, may, if he thinks fit, bail the offender. 2 *Inſt.* 189. 2 *Hawk. P. C.* 93.

Difference between bail and mainpriſe.

Bail and *mainpriſe* are uſed promiſcuouſly oftentimes for the ſame thing, and indeed the words import much the ſame thing; for the former is *traditus* J. S. and the other is *manucaptus per* J. S. But yet in a proper and legal ſenſe they differ. 1ſt, Always mainpriſe is a recognizance in a ſum certain, but bail is not always ſo. 2dly, He, that is delivered *per manucaptionem* only, is out of cuſtody; but he that is bailed, is in ſuppoſition of law ſtill in cuſtody, and the parties that take him to bail are in law his keepers, and may reſeize him to bring him in; and therefore if a man be let to mainpriſe, ſuppoſe in the *King's Bench*, an appeal or other ſuit cannot be brought againſt him as *in cuſtodia mareſcalli*; but if he be let to bail, he is in ſuppoſition of law ſtill *in cuſtodia mareſcalli*. 3dly, Tho' ſometimes the recognizances themſelves both in bail and mainpriſe are in a ſum certain, yet the entry on record in the one caſe is *deliberatur per manucaptionem*; and in the other caſe *traditur in ballium*. 2 Hal. Hiſ. P. C. 124, 125.

If a perſon be let to bail, yet he is in law in priſon, and his bail are his keepers, and therefore the juſtices of gaol-delivery may take an indictment againſt him, as well as if he were actually in gaol, but he that is let to mainpriſe is not in cuſtody. 2 *Hal. P. C.* 35.

Who are bailable or not bailable.

Regularly in all offences, either againſt the common law or acts of parliament, that are below felony, the offender is bailable, unleſs 1ſt, he hath had judgment. 2dly, Or that by ſome particular or ſpecial act of parliament bail is ouſted. 2 *Hal. H. P. C.* 127.

The

The ſtatute 3 *Ed.* 1. *c.* 15. declares, who are bailable and who not, as well in other caſes, as in caſes capital. But this ſtatute doth not extend to juſtices of the peace, for they were not in being till 1 *Ed.* 3. and therefore the ſtatute 1 & 2 *P. & M. cap.* 13. makes the ſtatute of 3 *Ed.* 1. *c.* 15. a direction to juſtices touching the bailing of offenders. 2 *Hal. H. P. C.* 127, 128.

Stat. *Weſt.* 1. (3 *Ed.* 1.) *c.* 15. [*A. D.* 1275. *intituled*] "Which priſoners be mainpernable, and which not. The penalty for unlawful bailment." 3 Ed. 1. c. 15.

"And foraſmuch as ſheriffs, and others, which have taken and kept in priſon perſons detected of felony, and incontinent have let out by replevin ſuch as were not repleviſable, and have kept in priſon ſuch as were repleviſable, becauſe they would gain of the one party, and grieve the other; (2) and foraſmuch as before this time it was not determined which perſons were repleviſable, and which not, but only thoſe that were taken for the death of man, or by commandment of the king, or of his juſtices, or for the foreſt; (3) it is provided, and by the king commanded, That ſuch priſoners as before were outlawed, and they which have abjured the realm, provors, and ſuch as be taken with the manner, and thoſe which have broken the king's priſon, thiefs openly defamed and known, and ſuch as be appealed by provers, ſo long as the provers be living (if they be not of good name) and ſuch as be taken for houſe-burning felonioufly done, or for falſe money, or for counterfeiting the king's ſeal, or perſons excommunicate, taken at the requeſt of the biſhop, or for manifeſt offences, or for treaſon touching the king himſelf, ſhall be in no wiſe repleviſable by the common writ, nor without writ: (4) But ſuch as be indicted of larceny, by enqueſts taken before ſheriffs or bailiffs by their office, or of light ſuſpicion, or for petty larceny, that amounteth not above the value of 12 *d.* if they were not guilty of ſome other larceny aforetime, or guilty of receipt of felons, or of commandment, or force, or of aid in felony done, or guilty of ſome other treſpaſs, for which one ought not to loſe life nor member, and a man appealed by a prover after the death of the provor (if he be no common thief, nor defamed) ſhall from henceforth be let out by ſufficient ſurety, whereof the ſheriff will be anſwerable, and that without giving ought of their goods. (5) And if the ſheriff, or any other, let any go at large by ſurety, that is not repleviſable, if he be ſheriff or conſtable, or any other bailiff of fee, which hath keeping of priſons, and thereof be attainted, he ſhall loſe his fee and office for ever. (6) And if the under-ſheriff, conſtable, or bailiff of ſuch as have fee for keeping of priſons, do it contrary to the will of his lord, or any other bailiff being not of fee, they ſhall have three years impriſonment, and make fine at the king's pleaſure. (7) And if any with-hold priſoners repleviſable, after that they have offered ſufficient ſurety, he ſhall pay a grievous amerciament to the king; (8) and if he take any reward for the deliverance

What ſort of offenders be not mainpernable. 1 Rol. 134, 192, 268. Bro. Mainprize, 11, 56, 78. Fitz. Mainprize, 1, 39, 40. Bro. Mainprize, 54, 57, 59, 60, 75, 78, 91. 11 Co. 29. Bro. Main. 6, 9, 19, 22, 30, 48, 50, 51, 53, 58, 63, 64, 73, 91, 94, 97.

What ſort of offenders be mainpernable. 2 Bulſtr. 328. 3 Bulſtr. 113.

The penalty for unlawful mainprize.

The penalty for detaining a priſoner that is mainpernable.

27 Ed. 1. ſtat. 1. c. 3. 3 H. 7. c. 3. 1 & 2 Ph. & M. c. 13. 2 Inſt. 184.

deliverance of ſuch, he ſhall pay double to the priſoner, and alſo ſhall be in the great mercy of the king."

Sheriffs and others] The words (*ſheriffs and others*) intend ſheriffs and gaolers that have cuſtody of gaols, ſo as this act *extends not to any of the King's juſtices, or judges of any ſuperior courts of juſtice*; 1ſt, For that they being ſuperiors are not comprehended in the general words, as often hath been obſerved; 2dly, (Who have taken and kept in priſon) which judges do not; 3dly, Becauſe in thoſe days priſoners were commonly bailed by the King's writ *de homine repleg'*, and then alſo by the writ *de odio & atia*, both which were directed to the ſheriff. 2 *Inſt.* 185, 186.

Felony] In thoſe days *felony comprehended* in it as well *treaſon*, as homicide, rape, or burglary, robbery, arſons, and all larcenies and thefts. 2 *Inſt.* 186.

And have kept in priſon] Here it is proved, that it is an *offence* as well *to bail a man not bailable, as to deny a man a bail that ought to be bailed*; and the reaſon is yielded wherefore the ſheriffs and others did ſo offend, becauſe they would gain of the one, and grieve the other, *viz.* either for avarice or for malice. 2 *Inſt.* 186.

Not determined] It was not certainly determined what people were repleviſable and what not, within the general words of the writ *de homine repleg'*. 2 *Inſt.* 186.

Repleviſable] This word (*repleviſable*) proves that this act intends what perſons were to be replevied by the common writ *de homine replegiando*, which was directed to the ſheriff under whoſe cuſtody the priſoners are, and of whom this act ſpeaks, and ſo it appears by the Regiſter; and replevy or plevy, is applied to the ſheriff to take pledges and bail to the higheſt courts of record; and the writ *de manucaptione* directed to the ſheriff, is grounded upon this act, in which writ not only *replegiare* but *manucapere* alſo is uſed. 2 *Inſt.* 186.

Death of a man] Here our act firſt ſets down, what perſons were not bailable for certain offences by the common writ *de homine repleg'*, and they are in number four; but *by the ancient law* of the land, in *all caſes of felony, if the party accuſed could find ſufficient ſureties, he was not to be committed to priſon*; but afterwards it was provided, that in caſe of *homicide*, the offender was not bailable. 2 *Inſt.* 186.

By commandment of the King] The words (*by command of the King*) are as much as to ſay (as ſome affirm) *by the King's courts of juſtice*; for all matters of judicature and proceedings in law are diſtributed to the courts of juſtice, and the King does judge by his juſtices, 8 *H.* 4. *fol.* 19. and 24 *H.* 8. *cap.* 12. and regularly no man ought to be attached by his body, but either by proceſs of law, that is (as has been ſaid) by the King's writs, or by indictment, or lawful warrant, as by many acts of parliament is manifeſtly enacted and declared, which are but expoſitions of *Magna Charta*; and all ſtatutes made contrary to *Magna Charta*, which is *lex terræ*, from the

the making thereof until 42 *Ed.* 3. are declared and enacted to be void; and therefore if this act of *Weſtm.* 1. concerning the extra-judicial commandment of the King, be againſt *Magna Charta*, it is void; and all reſolutions of judges concerning the commandment of the King, are to be underſtood of judicial proceedings. 2 *Inſt.* 187.

Or of his juſtices] The words *(or of his juſtices)* intend, upon any cauſe, whereof they are judges, appearing to them. 2 *Inſt.* 187.

Or for the foreſt] But as to impriſonment for offences, the law hath been much mitigated by later ſtatutes. 2 *Hawk.* 98. And all theſe four are particularly excepted out of the common writ *de homine replegiando*, that the ſheriff in his county court, which is not a court of record, ſhall not replevy any of theſe four that are committed; for example, tho' the party be committed by the perſonal command of the King, albeit the commitment be unlawful, yet the ſheriff ſhall not deal therein by the writ *de homine replegiando*; but the ſuperior courts at *Weſtminſter*, upon a *habeas corpus*, &c. ſhall do juſtice to the party in all theſe four caſes; ſo as *Stamford*, being well conſidered, impugneth not in any ſort this opinion; for his opinion extends only to the county court upon the writ *de homine replegiando*, and not to the ſuperior courts. 2 *Inſt.* 187.

Outlawed] Perſons outlawed are attainted in law, and therefore are not repleviſable, or to be bailed; for if a man be arraigned of homicide, and pleads not guilty, and is found guilty; and for difficulty of clergy is reprieved, it was reſolved by the juſtices that he was not bailable; for the intendment of the law in bails is *quod ſtat indifferenter*, whether he be guilty or no; but when he is convict by verdict or confeſſion, then he muſt be deemed in law to be guilty of the felony, and therefore not bailable at all; *a fortiori*, when the party is attainted in law. 2 *Inſt.* 187, 188.

And yet if the party upon the *cap. utlag.* plead *miſnomer*, or allege error, &c. he may be bailed. 2 *Inſt.* 188.

Abjured the realm] Perſons having abjured, are alſo attainted upon their own confeſſion, and therefore not bailable at all by law. 2 *Inſt.* 188.

Provers] The reaſon whereof provers or approvers be not bailable, is; for provers do firſt confeſs the felony to be done by themſelves, and therefore they are not bailable, becauſe it appears that they be guilty of the fact. 2 *Inſt.* 188.

Taken with the manner] For in this caſe *non ſtat indifferenter*, as hath been ſaid, whether he be guilty or no, being taken with the manner, or *mainer*, that is, with the thing ſtolen, as it were in his *hand*, anciently called *handhabend*; the like is anciently called *backberind*, as a bundle or fardle at his back, which *Bracton* uſes for a manifeſt theft *furtum manifeſtum*; and ſo doth *Britton*. 2 *Inſt.* 188.

Broken the King's priſon] Here are two offences, 1ſt, His breaking of the priſon; for it is preſumed, that he that is innocent will never break priſon; and 2dly, His flying, *quia fatetur facinus, qui judicium fugit.* 2 Inſt. 188.

Appealed by provers] The appeal of the approver is forcible againſt the appellee, becauſe the approver confeſſes himſelf guilty of the ſame felony, and therefore it ſerves in nature of an indictment againſt the appellee ſo long as the approver lives, unleſs the appellee be of good fame; but yet the general words do receive qualification; for albeit the approver be alive, yet if the approver waive in his appeal, the appellee ſhall be bailed, if no other appeal be againſt him. 2 *Inſt.* 188.

Houſe-burning] Burning of houſes, *&c.* was felony by the common law, as it appeareth by this act, and by our ancient authors, *viz. Glanvil*, *The Mirror*, *Bracton*, *Britton*, and *Fleta*; and this ſeemeth to be the law before the conqueſt. 2 *Inſt.* 188.

Falſe money] This appears to be treaſon by the common law. 2 *Inſt.* 188.

Counterfeiting the King's ſeal] This was alſo treaſon by the common law, as it appeareth by the ſaid ancient authors; and both theſe were declared to be high treaſon at the common law by the ſtatute of 25 *Ed. 3. cap.* 1. See more hereof in the third part of the *Inſt.* 2 *Inſt.* 189.

Perſons excommunicate] That is, he that is certified into *Chancery* by the biſhop to be excommunicated, and after is taken by force of the King's writ of *excommunicato capiendo*, (which is ſo called of the words in the writ called a *ſignificavit*) is not bailable, for in ancient time men were excommunicated but for hereſies, *propter lepram animæ*, or other heinous cauſes of eccleſiaſtical conuſance, and not for ſmall or petty caſes; and therefore in thoſe caſes the party was not bailable by the ſheriff or gaoler without the King's writ; but if the party offered ſufficient caution *de parendo mandatis eccleſiæ in forma juris*, then ſhould the party have the King's writ to the biſhop to accept his caution, and to cauſe him to be delivered; and if the biſhop will not ſend to the ſheriff to deliver him, then ſhall he have a writ out of the *Chancery* to the ſheriff for his delivery; or if he be excommunicated for a temporal cauſe, or for a matter whereof the eccleſiaſtical court hath no conuſance, he ſhall be delivered by the King's writ without any ſatisfaction. 2 *Inſt.* 189.

One taken by an *excommunicato capiendo* upon the ſtat. 5 *Eliz. cap.* 23. and brought to the bar by *hab. corp.* was bailed, by the opinion of all the juſtices, *contra Williams. Bulſt.* 122. *Paſch.* 9 *Jac. Anon. ibid. Yelverton* J. ſaid, that ſo it was reſolved in one *Keyſer*'s caſe, where he was taken by a writ *de excommunicato capiendo*, brought hither by a *habeas corpus*, and upon cauſe ſhewed, he was bailed by the court *de die in diem*; but neither the ſheriff, nor any juſtice of the peace in the county can bail ſuch a one, but the court here may well bail one, as in the caſe before, *de die in diem.*

Manifeſt offences] Or for open or manifeſt offences; for, as has been ſaid, bail is *quando ſtat indifferenter*, and not when the offence is open and manifeſt. 2 *Inſt.* 189.

One was *found guilty* of felony, but it being *doubted whether clergy was allowable* or not, he was reprieved without judgment; and the juſtices held,

held, that he is not bailable, becauſe by his being convicted, he is more than one vehemently ſuſpected; and the intendment of the law in bail, is, *quod ſtat indifferenter*, if he be guilty or not, till trial, *&c. D.* 179. *a. pl.* 42. *Paſch.* 2 *Eliz. Anon. Jenk.* 219. *pl.* 88. *S. P.* And as to him that is convicted, two juries have paſſed upon him, and it is evident that he is guilty; by all the judges of *England.*

Treaſon] For by the common law, a man accuſed or indicted of high treaſon, or of any felony whatſoever, was bailable upon good ſurety; for at the common law the gaol was his pledge or ſurety that could find none; and this appears by *Glanvil*, who ſays, *Is qui accuſatur ut prædiximus, per plegios ſalvos & ſecuros ſolet attachiari, aut ſi plegios non habuerit, in carcerem detrudi*; ſo as a man by the common law was bailable for any offence until he was convicted; and this ſeems to be the old law of the land before the conqueſt, *viz. Ingenuus quiſque fidejuſſores, qui eum (ſi quando in crimen vocetur) jus ſuum cuique tribuere quam paratiſſimum fore præſtent, fidiſſimos adhibeto.* 2 Inſt. 189.

In no wiſe repleviſable] That is, the ſheriff ſhall not replevy them by the common writ *de homine replegiando*; nor without writ, that is, *ex officio*; but all or any of theſe may be bailed in the *King's Bench*, &c. 2 *Inſt.* 189.

Larceny] This act divides larceny into two kinds, *viz.* grand and petit; grand larceny is when the thing ſtolen is above the value of 12 *d.* and petit larceny is, when it is of the value of 12 *d.* or under, and the things ſtolen are to be reaſonably valued; for the ounce of ſilver at the making of this act, was at the value of 20 *d.* and now it is of the value of 5 *s.* and above. 2 *Inſt.* 189, 190.

Sheriffs] That is, *ſheriffs in their tournes, or lords in their leets*, or thoſe that have infang-thief, and out-fang-thief, *&c.* 2 *Inſt.* 190.

Let out by ſufficient ſurety] That is to be underſtood where the indictment was taken before the ſheriff in his tourn, for here he was judge of the cauſe, for other priſoners could not be bailed without writ; and if the ſheriff having ſufficient ſurety offered to him, refuſed to bail him, he ſhould have a writ *de manucaptione* directed to the ſheriff to take pledges of him; and if the *bailiff of a hundred* (which is *intended of a ſteward in a leet*) refuſed to take pledges of one indicted before him, the priſoner ſhould have had a writ *de manucaptione* to the ſheriff to take pledges of him; and all this appears by the writ *de manucaptione*; but ſince his time this writ of *manucaptione* is taken away by the ſtatute of 28 *Ed.* 3. 2 *Inſt.* 190.

Without giving ought of their goods] For neither the ſheriff, nor other of the King's officers could take any thing for doing his office. 2 *Inſt.* 190.

If he be ſheriff, &c. of fee] So that at this time there were ſheriffwicks in fee, and conſtablewicks, and bailiwicks in fee, which had the keeping of priſons; theſe being attainted of letting to bail of any priſoner not bailable,

bailable, ſhould loſe the fee and bailiwick for ever; and upon office found, the King ſhould have the inheritance of the office in him to be grantable over. 2 *Inſt.* 190.

And if the under-ſheriff] Note, the action of the under-ſheriff, or under-bailiff without the conſent of his ſuperior, is no forfeiture of the fee, or bailiwick of the ſuperior, tho' in many other caſes the ſuperior ſhall anſwer for his deputy. 2 *Inſt.* 191.

If any with-hold priſoners repleviſable] Here it appeareth that to deny a man plevin that is pleviſable, and thereby to detain him in priſon, is a great offence, and grievouſly to be puniſhed. 2 *Inſt.* 191.

It ſeems clear, that wherever juſtices of the peace have power to hear and determine any offence which is bailable within the ſaid ſtatute of 3 *Ed.* 1. any *one* of ſuch juſtices ſeems conſequently to have power to bail any perſon indicted at the ſeſſions for ſuch offence, becauſe every juſtice is a judge of the court which is to determine it. 2 *Hawk. P. C.* 103, 105. *Coke*, bail and mainprize, *chap.* 6. *Lamb.* 347.

Alſo every juſtice of the peace has a diſcretionary power of admitting perſons to bail who have given a dangerous wound. 2 *Hawk. P. C.* 103. But the power of juſtices of admitting to bail, is chiefly regulated by the three following acts of parliament.

1 Ric. 3. c. 3. **Stat.** 1 *Ric.* 3. *c.* 3. [*A. D.* 1483. *intituled*] "Every juſtice of peace may let a priſoner to mainpriſe. No officer ſhall ſeize the goods of a priſoner until he be attainted."

Every juſtice of peace may admit a priſoner to bail. Rep. 3 H. 7. c. 3. 1 & 2 Ph. & M. c. 13.

"Foraſmuch as divers perſons have been daily arreſted and impriſoned for ſuſpection of felony, ſometime of malice, and ſometime of a light ſuſpection, and ſo kept in priſon without bail or mainpriſe, to their great vexation and trouble: (2) Be it ordained and eſtabliſhed by authority of this preſent parliament, That every juſtice of peace in every ſhire, city, or town, ſhall have authority and power, by his or their diſcretion, to let ſuch priſoners and perſons, ſo arreſted, to bail or mainpriſe, in like form as though the ſame priſoners or perſons were indicted thereof of record before the ſame juſtices in their ſeſſions; (3) and that juſtices of peace have authority to inquire in their ſeſſions of all manner eſcapes of every perſon arreſted and impriſoned for felony. (4) And that no ſheriff, under-ſheriff, nor eſcheator, bailiff of franchiſe, nor any other perſon, take or ſeiſe the goods of any perſon arreſted or impriſoned for ſuſpicion of felony, before that the ſame perſon, ſo arreſted and impriſoned, be convicted or attainted of ſuch felony according to the law, or elſe the ſame goods otherwiſe lawfully forfeited; (5) upon pain to forfeit the double value of the goods ſo taken, to him that is ſo hurt in that behalf, by action of debt to be purſued by like proceſs, judgment, and execution, as is commonly uſed in other actions of debt ſued at the common law; (6) and that no eſſoin or protection be allowed in any ſuch action; nor that the defendant in any ſuch action be admitted to wage or do his law."

Eſcape of Felons inquirable by juſtices of peace. 1 Lutw. 132. Cro El. 749. 43 Ed. 3. f. 24. Cro. 193. No officer ſhall ſeize the goods of a priſoner until he be attainted, or the goods forfeited.

But this ſtatute, ſo far as it gives power to a *ſingle* juſtice, is repealed by the following act of 3 *Hen.* 7. *c.* 3.

Stat.

Stat. 3 *Hen.* 7. *cap.* 3. [*A. D.* 1486. *intituled*] " Juſtices of peace may let priſoners to bail. The ſheriff ſhall certify the names of all his priſoners at the gaol-delivery." 3 Hen. 7. c. 3.

Item, " Where in the parliament late holden at *Weſtminſter*, the firſt year of *Richard*, late in deed, and not of right, king of *England* the third; it was ordained and enacted among other divers acts, that every juſtice of the peace, in every ſhire, city, or town, ſhould have authority and power, by his or their diſcretion, to let priſoners, and perſons arreſted for light ſuſpicion of felony, to bail or mainpriſe; (2) by colour whereof afterwards divers perſons, ſuch as were not mainpernable, were oftentimes letten to bail and mainpriſe, by juſtices of the peace, againſt the due form of the law, whereby many felons eſcaped, to the great diſpleaſure of the king, and annoyance of his liege people: (3) Wherefore the king our ſaid ſovereign lord conſidering it, by the advice and aſſent of the lords ſpiritual and temporal, and at the prayer of the commons in this preſent parliament aſſembled, and by the authority of the ſame, hath ordained, eſtabliſhed, and enacted, That the juſtices of peace in every ſhire, city, and town, or two of them at the leaſt, whereof one to be of the *quorum*, have authority and power to let any ſuch priſoners, or perſons mainpernable by the law, that have been impriſoned within their ſeveral counties, city, or town, to bail or mainpriſe, unto their next general ſeſſions, or unto the next gaol-delivery of the ſame gaols in every ſhire, city, or town, as well within franchiſes as without, where any gaols been or hereafter ſhall be; (4) and that the ſaid juſtices of the peace, or one of them, ſo taking any ſuch bail or mainpriſe, do certify the ſame at the next general ſeſſions of the peace, or the next general gaol-delivery of any ſuch gaol within every ſuch county, city, or town, next following after any ſuch bail or mainpriſe ſo taken; upon pain to forfeit unto the king for every default thereupon recorded 10*l.* (5) And moreover it is enacted by the ſame authority, that every ſheriff, bailiff of franchiſe, and every other perſon, having authority or power of keeping of gaol, or of priſoners for felony, in like manner and form do certify the names of every ſuch priſoner in their keeping, and of every priſoner to them committed for any ſuch cauſe, at the next general gaol-delivery, in every county or franchiſe where any ſuch gaol or gaols have been, or hereafter ſhall be, there to be kalendred before the juſtices of the deliverance of the ſame gaol, whereby they may, as well for the king as for the party, proceed to make deliverance of ſuch priſoners according to the law, (6) upon pain to forfeit unto the king for every default there recorded, *C. s.* (7) and that the foreſaid act giving authority and power in the premiſſes to any juſtice of the peace by himſelf, be in that behalf utterly void and of none effect, by authority of this preſent parliament."

1 R. 3. c. 3. Juſtices of the peace may let a priſoner to mainpriſe, who is mainpernable. Inforced by 1 & 2 Phil. & Mar. c. 13.

The ſheriff ſhall certify the names of all priſoners in his cuſtody to the juſtices of gaol-delivery.

A repeal of ſtat. of 1 R. 3. c. 3. touching bailing of priſoners. Kelyng 3.

But theſe ſtatutes having been often abuſed by juſtices of the peace bailing perſons in the name of *two* juſtices, where *one* only was *preſent*, and for offences *not* bailable; it was therefore found neceſſary to make the following act. 1. *Bac. Abr.* 222.

Stat.

1 & 2 Ph & Ma c 13.

Stat. 1 & 2 *Phil. & Ma. c.* 13. [*A. D.* 1554. *Intituled*] "An act touching bailment of perſons."

In what manner juſtices of peace may bail perſons arreſted of felony, or ſuſpicion thereof, &c. 3 H. 7. c. 3. 1 Roll. 268.

"Where in the parliament holden at *Weſtminſter* in the third year of the reign of the noble prince, king *Henry* the ſeventh, it was among other things ordained and enacted, That no priſoner arreſted for felony, ſhould be letten to bail or mainpriſe, by any one juſtice of peace, but by the whole juſtices, or at leaſt by two of them, whereof one to be of the *Quorum*; (2) ſince the making of which eſtatute, one juſtice of peace in the name of himſelf and one other of the juſtices his companion, not making the ſaid juſtice party nor privy unto the caſe wherefore the priſoner ſhould be bailed, hath oftentimes by ſiniſter labour and means, ſet at large the greateſt and notableſt offenders, ſuch as be not repleviſable by the laws of this realm; (3) and yet the rather to hide their affections in that behalf, have ſignified the cauſe of their apprehenſion to be but only for ſuſpicion of felony, whereby the ſaid offenders have eſcaped unpuniſhed, and do daily, to the high diſpleaſure of Almighty God, the great peril of the king and queen's true ſubjects, and encouragement of all thieves and evil-doers:

None ſhall be let to bail, which be forbidden to be bailed by the ſtatute of 3 Ed. 1. c. 15.

Sect. 2. For reformation whereof, Be it ordained and enacted by the king and queen's majeſties, the lords ſpiritual and temporal, and the commons in this preſent parliament aſſembled, and by authority of the ſame, That from and after the firſt day of *April* next coming, no juſtice or juſtices of peace ſhall let to bail or mainpriſe any ſuch perſon or perſons, which for any offence or offences by them or any of them committed, be declared not to be repleviſed or bailed, or be forbidden to be repleviſed or bailed by the ſtatute of *Weſtminſter primer*, made in the parliament holden in the third year of the reign of king *Edward* the firſt.

Sect. 3. And furthermore, That any perſon or perſons arreſted for man-ſlaughter or felony, or ſuſpicion of man-ſlaughter or felony, being bailable by the law, ſhall not after the ſaid firſt day of *April* be let to bail or mainpriſe by any juſtices of peace, if it be not in open ſeſſions, except it be by two juſtices of peace at the leaſt, whereof one to be of the *Quorum*, and the ſame juſtices to be preſent together at the time of the ſaid bailment or mainpriſe; (2) which bailment or mainpriſe they ſhall certify in writing ſubſcribed or ſigned with their own hands, at the next general gaol-delivery to be holden within the county where the ſaid perſon or perſons ſhall be arreſted or ſuſpected.

3 Bulſtr. 113.

The juſtices duty in bailment of a priſoner extended to ſuch as ſhall be committed for man ſlaughter, &c. 2 & 3 Ph. & M. c. 10. in examination of him

Sect. 4. And that the ſaid juſtices, or one of them, being of the *Quorum*, when any ſuch priſoner is brought before them for any man-ſlaughter or felony, before any bailment or mainpriſe, ſhall take the examination of the ſaid priſoner, and information of them that bring him, of the fact and circumſtances thereof, and the ſame, or as much thereof as ſhall be material to prove the felony, ſhall put in writing before they make the ſame bailment; (2) which ſaid examination, together with the ſaid bailment, the ſaid juſtices ſhall certify at the next general gaol-delivery to be holden within the limits of their commiſſion.

and others, and certifying thereof. 2 & 3 Ph. & M. c. 10. Kelyng 19.

Sect. 5. "And that every coroner, upon any inquiſition before him found, whereby any perſon or perſons ſhall be indicted for murder or man-ſlaughter, or as acceſſory or acceſſories to the ſame, before the murder or man-ſlaughter committed, ſhall put in writing the effect of the evidence given to the jury before him, being material: (2) And as well the ſaid juſtices, as the ſaid coroner, ſhall have authority by this act, to bind all ſuch by recognizance or obligation, as do declare any thing material, to prove the ſaid murder or man-ſlaughter, offences or felonies, or to be acceſſory or acceſſories to the ſame, as is aforeſaid, to appear at the next general gaol-delivery to be holden within the county, city, or town corporate where the trial thereof ſhall be, then and there to give evidence againſt the party ſo indicted at the time of his trial; (3) and ſhall certify as well the ſame evidence as ſuch bond or bonds in writing, as he ſhall take, together with the inquiſition or indictment before him taken and found, at or before the time of his ſaid trial thereof to be had or made: (4) And likewiſe the ſaid juſtices ſhall certify all and every ſuch bond taken before them, in like manner as before is ſaid of bailments and examination: (5) And in caſe any juſtice of peace of *quorum*, or coroner, ſhall after the ſaid firſt day of *April*, offend in any thing contrary to the true intent and meaning of this preſent act, that then the juſtices of gaol-delivery of the ſhire, city, town or place where ſuch offence ſhall happen to be committed, upon due proof thereof by examination before them, ſhall for every ſuch offence ſet ſuch fine on every of the ſame juſtices of peace and coroner, as the ſame juſtices of gaol-delivery ſhall think meet, and eſtreat the ſame, as other fines and amerciaments aſſeſſed before juſtices of gaol-delivery ought to be.

The coroner's duty upon an inquiſition found before him.

The penalty of any juſtice of peace or coroner omitting his duty.

Sect. 6. "Provided always, and be it further enacted by the authority aforeſaid, That juſtices of peace and coroners within the city of *London*, and the county of *Middleſex*, and in other cities, boroughs and towns corporate within this realm and *Wales*, ſhall within their ſeveral juriſdictions have authority to let to bail felons and priſoners, in ſuch manner and form as they have been heretofore accuſtomed; this act, or any thing therein contained to the contrary notwithſtanding: (2) And alſo ſhall take examinations and bonds, as is aforeſaid, upon every bailment by them or any of them to be made; (3) and ſhall certify every ſuch bailments, bonds and examinations by them or any of them taken or made, at the next gaol-delivery to be holden within the ſhire, city, borough or town where their ſeveral juriſdictions extendeth; upon like pain and forfeiture as is before limited in this preſent act.

Juſtices of peace of London, Middleſex, &c.

Sect. 7. "And be it alſo enacted by the authority aforeſaid, That no writs of *habeas corpus* or *certiorari* ſhall be hereafter granted to remove any priſoner out of any gaol, or to remove any recogniſance, except the ſame writs be ſigned with the proper hand of the chief juſtice, or in his abſence, one of the juſtices of the court out of which the ſame writs ſhall be awarded or made; (2) upon pain that he that writeth any ſuch writs, not being ſigned as is aforeſaid, to forfeit to our ſaid ſovereign lord the king and the queen, for every ſuch writs, five pounds."

Removing of a priſoner, or recogniſance.

The authority given to one juſtice of the peace by 1 *R.* 3. to admit perſons to bail for felony, being repealed by 3 *H.* 7. and 1 & 2 *Phil. & Ma.*

one juſtice of the peace cannot admit perſons to bail, unleſs it be for an offence directly tending to the breach of the peace, the reſtraint whereof is the chief end of his office, or for an offence by ſtatute put under the cognizance of one juſtice, or for an offence indictable at the ſeſſions. 2 *Hawk. P. C.* 105.

But though the ſtatute of *Ph. & Ma.* has preſcribed the ſtatute of *Weſtm.* 1. as a pattern for juſtices to follow in relation to the bail, and it therefore follows, that a perſon under an actual arreſt for any crime, declared to be irrepleviſable by that act, cannot be bailed by any juſtice; yet if a perſon at large be only accuſed of any ſuch crime on a ſlight ſuſpicion, before a juſtice of the peace, it ſeems that the juſtices ought not to commit him, but ought to take ſurety from him to appear before a proper court. 2 *Hawk. P. C.* 105.

Alſo the ſtatute of 1 & 2 *Ph. & Ma.* expreſly mentioning the bailing of perſons for man-ſlaughter, as well as for other felonies, it is clear, that juſtices of the peace, may by force thereof ſafely bail any perſon impriſoned on a ſlight ſuſpicion of a fact, appearing to be no higher an offence than man-ſlaughter; and much more if it appear to amount to no more than homicide by miſadventure, or in ſelf-defence; but the juſtices ought to be cautious the offence does not amount to murder; alſo that there be no violent preſumption that the party did the fact; for if any ſuch appear, the party ought not to be bailed, though the offence amount to no more than homicide by miſadventure or ſelf-defence. 2 *Hawk. P. C.* 105. 1 *Rol. Rep.* 268. *H. P. C.* 299. *Dalt. c.* 114. *Lamb.* 346. 2 *Inſt.* 314.

Man-ſlaughter not bailable, if confeſſed by the party. Mich. 14 Jac. 1. B. R. The King againſt Sir Nicholas Poynes and his ſon.

Sir *Nicholas Poynes* and his ſon were indicted for murder, and committed to the Marſhalſey, without bail or mainprize. The court was moved to have them bailed, becauſe they were not indicted but by the cornoner's inqueſt, and no verdict as yet given up by them, and that as he urged, it was *ſe defendendo*. *Coke* chief juſtice: If one do kill another, it is not known at the firſt, whether this be murder or not. By the ſtat. *Weſt.* 1. (3 *Ed.* 1.) *c.* 15. for the death of a man he is not to be bailed. By ſtat. 1 & 2 *Ph. & Ma. c.* 13. A man is to be bailed in caſe of man-ſlaughter, if he be bailable by the law. But in caſe of man-ſlaughter he is not bailable in *all* caſes. If he confeſs the ſame, he is not bailable. For the death of a man, I will not bail any one, unleſs it be by command of the king. We may bail one here for treaſon, but this we will not do. *Haughton* Juſtice: If he confeſs to a juſtice of peace that he did the fact, he is not to be bailed. *Coke*: So ſhall it be for a notorious man-ſlaughter, he is not to be bailed. —The court refuſed to bail them; and ſo by the rule of the court they were ſent back again to the Marſhalſey.

What ſhall be deemed ſufficient bail.

No perſon ſhall be bailed for felony by leſs than two, and it is ſaid not to be uſual for the *King's Bench* to bail a man on a *habeas corpus*, on a commitment for treaſon or felony, without four ſureties; and the ſum in which the ſureties are to be bound, ought to be never leſs than 40*l.* for a capital crime; but it may be higher in diſcretion, on conſideration of the ability and quality of the priſoner, and the nature of the offence; and the ſureties may be examined on oath concerning their ſufficiency, by him that takes the bail; and if a perſon be bailed by inſufficient ſureties, he may

be

be required either by him who took the bail, or by any other who hath power to bail him, to find better ſureties, and on his refuſal, may be committed; for inſufficient ſureties are as no ſureties. 2 *Hawk. P. C.* 88, 89.

But juſtices muſt take care, that under pretence of demanding ſufficient ſurety, they do not make ſo exceſſive a demand, as in effect amounts to a denial of bail; for this is looked upon as a great grievance, and is complained of as ſuch by ſtat. 1 *Will. & Ma. ſeſſ.* 2. by which it is declared, *that exceſſive bail ought not to be required.* Exceſſive bail not to be required.

It ſeems clear that wherever a ſheriff, in purſuance of the ſaid ſtatute *Weſt.* 1. (3 *Ed.* 1.) *c.* 15. or juſtices of the peace in purſuance of the ſubſequent ſtatutes, grounded on the ſaid ſtatute of *Weſt.* 1. ſhall admit any perſon to bail for felony, with inſufficient ſureties, who ſhall not afterwards appear according to the condition of the recogniſance, the juſtices of aſſiſe may, by force of 27 *Ed.* 1. *c.* 3. commonly called the ſtatute *de finibus levatis*, impoſe ſuch fine on ſuch ſheriff or juſtices of peace, as to ſuch juſtices of aſſiſe in their diſcretion ſhall ſeem proper. But if a priſoner, who is bailed by inſufficient ſureties, do appear according to the condition of the recognizance, it ſeems that thoſe who admitted him to bail are ſafe, in as much as the end of the law is anſwered, and the appearance of the priſoner as effectually procured by ſuch ſureties, as if they had been never ſo ſufficient. 2 *Hawk. P. C.* 89. Of taking inſufficient bail.

There is no doubt but that the bailing of a perſon, who is not bailable by law, is puniſhable either at common law, as a negligent eſcape, or as an offence againſt the ſaid ſtatute of *Weſt.* 1. *c.* 15. and 1 & 2 *Ph. & Ma. c.* 13. and the two following ſtatutes. 2 *Hawk. P. C.* 89. Of granting bail where it ought to be denied.

Stat. 27 *Ed.* 1. *c.* 3. [*A. D.* 1299. *intituled*] "Juſtices of aſſiſe ſhall be of gaol-delivery. Who ſhall puniſh officers bailing ſuch as are not bailable." 27 Ed. 1. c. 3.

"Foraſmuch as ſheriffs and others heretofore have let out by replevin common felons, and openly defamed, being taken and impriſoned for murther and felony, and ſuch as be not repleviſable, contrary to the form of our Statute of perſons repleviſable, and not repleviſable, lately made, whereby ſuch tranſgreſſors not repleviſable be let out, (2) and to deliver them deceitfully before the coming of the juſtices errant, or other aſſigned for their deliverance, they procure by themſelves and by their friends, jurors of the country, and ſome they threat, whereby as well for fear of the ſheriff, and other that let them at large by plevin, as for fear of the thieves being ſo delivered before the juſtices aſſigned for gaol-deliveries, ſuch felonies and murthers are concealed, and ſo being concealed, remain ſtill unpuniſhed; (3) we, for the utility of our realm, and for the more aſſured conſervation of our peace, have provided and ordained, that juſtices aſſigned to take aſſiſes in every county where they do take aſſiſes, as they be appointed, incontinent after the aſſiſes taken in the ſhires, ſhall remain both together if they be lay; and if one of them be a clerk, then one of the moſt diſcreet knights of the ſhire, being aſſociate to him that is a 3 Ed. 1. c. 15. Juſtices of aſſiſe ſhall be alſo juſtices of gaol-delivery.

layman, by our writ ſhall deliver the gaols of the ſhires, as well within liberties as without, of all manner of priſoners, after the form of the gaol-deliveries of thoſe ſhires beforetime uſed. (4) And the ſame juſtices ſhall inquire then, if ſheriffs or any other have let out by replevin priſoners not repleviſable, or have offended in any thing contrary to the form of the aforeſaid ſtatute lately made at *Weſtminſter*; and whom they ſhall find guilty, they ſhall chaſten and puniſh in all things according to the form of the ſtatute aforeſaid."

Puniſhment of Sheriffs for their offences. 1 & 2 P. & M. c. 13. 28 Ed. 1 ſtat. 2. of perſons appealed.

4 Ed. 3. c. 2. **Stat. 4 *Ed.* 3. *c.* 2.** [*A. D.* 1330. *intituled*] "The authority of juſtices of aſſiſe, gaol-delivery, and of the peace."

4 Inſt 168. 20 Ed. 3. c. 6. "Item it is ordained, That good and diſcreet perſons, other than of the places, if they may be found ſufficient, ſhall be aſſigned in all the ſhires of *England*, to take aſſiſes, juries, and certifications, and to deliver the gaols; (2) and that the ſaid juſtices ſhall take the aſſiſes, juries, and certifications, and deliver the gaols at leaſt three times a year, and more often if need be. 1 Ed. 3. ſtat. 2. c. 16. (3) Alſo there ſhall be aſſigned good and lawful men in every county to keep the peace. (4) And at the time of the aſſignments, mention ſhall be 18 Ed. 3. ſtat. 1. c. 2. made that ſuch as ſhall be indicted or taken by the ſaid keepers of the peace, ſhall not be let to mainpriſe by the ſheriffs, nor by none other mi- 34 Ed. 3. c. 1, 13 R. 2. ſtat. 1. c. 7. niſters, if they be not mainpernable by the law; *(5)* nor that ſuch as ſhall be indicted, ſhall not be delivered but at the common law. (6) And the juſtices aſſigned to deliver the gaols ſhall have power to deliver the ſame gaols of thoſe that ſhall be indicted before the keepers of the peace; (7) and that the ſaid keepers ſhall ſend their indictments before the juſtices, and they ſhall have power to enquire of ſheriffs, gaolers, and other, in whoſe ward ſuch indicted perſons ſhall be, if they make deliverance, or let to mainpriſe any ſo indicted, which be not mainpernable, and to puniſh the ſaid ſheriffs, gaolers, and others, if they do any thing againſt this act."

Juſtices of the peace, before they bail a man under commitment, muſt at their peril inform themſelves of the cauſe for which he was committed; for if he were in truth committed for a cauſe not bailable by law, it is no excuſe that they did not kn w that he was committed for ſuch cauſe. 2 *Hawk. P. C.* 90. *Poph.* 96. *Dalt. cap.* 114.

Information againſt a juſtice for bailing a felon. 2 Stran. 1215, Mich. 18 Geo. 2. Rex & William Clark, eſq.

He as a juſtice of *Surrey* committed a man on ſuſpicion of ſtealing a mare, and bound over the owner to proſecute. Afterwards upon examining two other perſons, he admitted the party to bail. The proſecutor appeared at the aſſiſes, and found a bill, but the party accuſed did not appear. And the court granted an information againſt the juſtice, declaring they ſhould not have bailed the man themſelves.

Court refuſed to bail a perſon for receiving ſtolen goods: defendant's affida-

The defendant was brought up here by *habeas corpus* from the houſe of correction, being committed there for receiving a ſilver ſpoon, which was ſtolen, knowing it to be ſtolen; and Mr. *Eyres* moved that he might be bailed, having four credible and ſubſtantial men for that purpoſe, and having an affidavit to produce, which poſitively ſwore, that though he did

did receive the ſilver ſpoon, yet that he did not know that it was ſtolen: And that the priſoner was an apprentice to an apothecary of this city, and the ſon of a gentleman of fortune. And cited the caſe of *Rex* and *Crips*, *Paſch.* 6 *Geo.* 1. to ſhew that the court will ſometimes enter into the probability of the perſon's not being guilty (of the matters which he is accuſed of) and will read affidavits to that purpoſe.

vit admits the receipt of the goods, but denies he knew them to be ſtolen, which is a fact triable only by a jury. Rep. in time of lord Hardw. 96. Mich. 8 Geo. 2. in B. R. Rex v. Parnam.

The court, at firſt, ſcrupled to ſuffer the affidavits to be read; but on citing *Crips*'s caſe, they permitted it. And then Mr. Juſtice *Lee* ſaid, that the priſoner had admitted the reception of the ſpoon, though he denies that he knew it was ſtolen. So that the only queſtion is, whether he did know it or not; which is a matter fit to be tried by none but a jury: And that the reaſon why they admitted *Crips* to bail was, becauſe the proſecutor himſelf confeſſed himſelf doubtful as to the identity of the perſon. But that is not the caſe here; and in *Crips*'s caſe, I denied, on the trial, to grant him a copy of his indictment, in order to bring an action upon it for a malicious proſecution; becauſe the accuſation ſeemed to be grounded merely on the miſtake of the identity of the perſon.

Chief Juſtice: According to my brother *Lee*'s ſtate of the caſe of *Rex* and *Crips*, it appears that he was not bailed, on conſideration of the merits of the commitment, but of the miſtake of the perſon accuſed. But here you apply to have the defendant diſcharged on the very merits: but I think it would be of the moſt dangerous conſequence, if we ſhould allow of ſuch proceedings; for then all the priſoners in *England* would lay their caſe before us, and we, inſtead of the jury, muſt try the truth of the fact for which they are committed. Beſide, it might very much encourage the compounding of felonies, between the proſecutor and priſoner. And therefore I think he ought to be remanded: and *per curiam* he was remanded, *abſente Prolyn.*

This ſeems to be a miſdemeanour, not only by the ſtatute, but alſo by the common law, and puniſhable thereby as an offence againſt the liberty of the ſubject, not only by action at the ſuit of the party wrongfully impriſoned, but alſo by indictment at the ſuit of the king. 2 *Hawk. P. C.* 90.

Offence of denying, delaying or obſtructing bail where it ought to be granted.

But it ſeems alſo clear, that he who has power to bail another, is not bound to demand of him to find ſureties, and to forbear committing him till he ſhall refuſe to find them, but may well juſtify his commitment, unleſs the party himſelf ſhall offer his ſureties. 2 *Hawk. P. C.* 90.

Stat. 31 *Car.* 2. *c.* 2. [*A. D.* 1678. *intituled*] "An act for the better ſecuring the liberty of the ſubject, and for prevention of impriſonment beyond the ſeas."

Bail by *habeas corpus.*

"Whereas great delays have been uſed by ſheriffs, gaolers, and other officers, to whoſe cuſtody any of the king's ſubjects have been committed for criminal, or ſuppoſed criminal matters, in making return of writs of

habeas

habeas corpus to them directed, by ſtanding out an *alias* and *pluries habeas corpus*, and ſometimes more, and by other ſhifts to avoid their yielding obedience to ſuch writs, contrary to their duty, and the known laws of the land, whereby many of the king's ſubjects have been, and hereafter may be long detained in priſon, in ſuch caſes where by law they are bailable, to their great charges and vexation:

Sect. 2. "For the prevention whereof, and the more ſpeedy relief of all perſons impriſoned for any ſuch criminal or ſuppoſed criminal matters; (2) Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority thereof, That whenſoever any perſon or perſons ſhall bring any *habeas corpus* directed unto any ſheriff or ſheriffs, gaoler, miniſter *or other perſon whatſoever*, for any perſon in his or their cuſtody, and the ſaid writ ſhall be ſerved upon the ſaid officer, or left at the gaol or priſon with any of the under-officers, under-keepers or deputy of the ſaid officers or keepers, that the ſaid officer or officers, his or their under-officers, under-keepers or deputies, ſhall within three days after the ſervice thereof, as aforeſaid, (unleſs the commitment aforeſaid were for treaſon or felony, plainly and ſpecially expreſſed in the warrant of commitment) upon payment or tender of the charges of bringing the ſaid priſoner to be aſcertained by the judge or court that awarded the ſame, and endorſed upon the ſaid writ, not exceeding twelve pence *per* mile, and upon ſecurity given by his own bond to pay the charges of carrying back the priſoner, if he ſhall be remanded by the court or judge, to which he ſhall be brought, according to the true intent of this preſent act, and that he will not make any eſcape by the way, make return of ſuch writ; (3) and bring, or cauſe to be brought the body of the party ſo committed or reſtrained, unto or before the lord chancellor, or lord keeper of the great ſeal of *England*, for the time being, or the judges or barons of the ſaid court from whence the ſaid writ ſhall iſſue, or unto and before ſuch other perſon or perſons before whom the ſaid writ is made returnable, according to the command thereof; (4) and ſhall then likewiſe certify the true cauſes of his detainer or impriſonment, unleſs the commitment of the ſaid party be in any place beyond the diſtance of twenty miles from the place or places where ſuch court or perſon is or ſhall be reſiding; and if beyond the diſtance of twenty miles, and not above one hundred miles, then within the ſpace of ten days; and if beyond the diſtance of one hundred miles, then within the ſpace of twenty days after ſuch delivery aforeſaid, and not longer.

Writs of *habeas corpus* within three days after ſervice to be returned, and the body brought, if within twenty miles, &c. 14 Vin. Abr. 209, &c.

Sect. 3. "And to the intent that no ſheriff, gaoler or other officer may pretend ignorance of the import of any ſuch writ; (2) Be it enacted by the authority aforeſaid, That all ſuch writs ſhall be marked in this manner, *Per ſtatutum triceſimo primo Caroli ſecundi regis*, and ſhall be ſigned by the perſon that awards the ſame; (3) and if any perſon or perſons ſhall be, or ſtand committed or detained, as aforeſaid, for any crime, unleſs for felony or treaſon, plainly expreſſed in the warrant of commitment in the vacation-time, and out of term, it ſhall and may be lawful to and for the perſon or perſons

Such writs how to be marked.

Writs of *habeas corpus*, and the proceedings thereon in vacation-time.

ſons ſo committed or detained (other than perſons convict or in execution) by legal proceſs, or any one on his or their behalf, to appeal or complain to the lord chancellor or lord keeper, or any one of his majeſty's juſtices, either of the one bench or of the other, or the barons of the *Exchequer* of the degree of the coif; (4) and the ſaid lord chancellor, lord keeper, juſtices or barons, or any of them, upon view of the copy or copies of the warrant or warrants of commitment and detainer, or otherwiſe upon oath made, that ſuch copy or copies were denied to be given by ſuch perſon or perſons in whoſe cuſtody the priſoner or priſoners is or are detained, are hereby authorized and required, upon requeſt made in writing by ſuch perſon or perſons, or any on his, her or their behalf, atteſted and ſubſcribed by two witneſſes who were preſent at the delivery of the ſame, to award and grant an *habeas corpus* under the ſeal of ſuch court whereof he ſhall then be one of the judges; (5) to be directed to the officer or officers in whoſe cuſtody the party ſo committed or detained ſhall be, returnable *immediate* before the ſaid lord chancellor or lord keeper, or ſuch juſtice, baron, or any other juſtice or baron of the degree of the coif of any of the ſaid courts; (6) and upon ſervice thereof, as aforeſaid, the officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or their deputy, in whoſe cuſtody the party is ſo committed or detained, ſhall, within the times reſpectively before limited, bring ſuch priſoner or priſoners before the ſaid lord chancellor or lord keeper, or ſuch juſtices, barons, or one of them, before whom the ſaid writ is made returnable, and in caſe of his abſence, before any other of them, with the return of ſuch writ, and the true cauſes of the commitment and detainer; (7) and thereupon, within two days after the party ſhall be brought before them, the ſaid lord chancellor or lord keeper, or ſuch juſtice or baron, before whom the priſoner ſhall be brought, as aforeſaid, ſhall diſcharge the ſaid priſoner from his impriſonment, taking his or their recognizance, with one or more ſurety or ſureties in any ſum, according to their diſcretions, having regard to the quality of the priſoner, and nature of the offence, for his or their appearance in the court of *King's Bench* the term following, or at the next aſſizes, ſeſſions or general gaol-delivery of and for ſuch county, city or place where the commitment was, or where the offence was committed, or in ſuch other court where the ſaid offence is properly cognizable, as the caſe ſhall require, and then ſhall certify the ſaid writ, with the return thereof, and the ſaid recognizance or recognizances, into the ſaid court where ſuch appearance is to be made; (8) unleſs it ſhall appear unto the ſaid lord chancellor or lord keeper, or juſtice or juſtices, or baron or barons, that the party ſo committed is detained upon a legal proceſs, order or warrant, out of ſome court that hath juriſdiction of criminal matters, or by ſome warrant ſigned and ſealed with the hand and ſeal of any of the ſaid juſtices or barons, or ſome juſtice or juſtices of the peace, for ſuch matters or offences for the which by the law the priſoner is not bailable.

Sect. 4. "Provided always, and be it enacted, That if any perſon ſhall have wilfully neglected by the ſpace of two whole terms after his impriſonment, Perſons neglecting two terms to pray a *habeas corpus*, ſhall have

none in vacation time, in purſuance of this act.

ſonment, to pray a *habeas corpus* for his enlargement, ſuch perſon ſo wilfully neglecting, ſhall not have any *habeas corpus* to be granted in vacation-time, in purſuance of this act.

Officers how to be proceeded againſt for not obeying ſuch writs.

Sect. 5. " And be it further enacted by the authority aforeſaid, That if any officer or officers, his or their under-officer or under-officers, under-keeper or under-keepers, or deputy, ſhall neglect or refuſe to make the returns aforeſaid, or to bring the body or bodies of the priſoner or priſoners according to the command of the ſaid writ, within the reſpective times aforeſaid, or upon demand made by the priſoner or perſon in his behalf, ſhall refuſe to deliver, or, within the ſpace of ſix hours after demand, ſhall not deliver to the perſon ſo demanding, a true copy of the warrant or warrants of commitment and detainer of ſuch priſoner, which he and they are hereby required to deliver accordingly, all and every the head gaolers and keepers of ſuch priſons, and ſuch other perſon in whoſe cuſtody the priſoner ſhall be detained, ſhall for the firſt offence forfeit to the priſoner or party grieved, the ſum of one hundred pounds; (2) and for the ſecond offence the ſum of two hundred pounds, and ſhall and is hereby made incapable to hold or execute his ſaid office; (3) the ſaid penalties to be recovered by the priſoner or party grieved, his executors or adminiſtrators, againſt ſuch offender, his executors or adminiſtrators, by any action of debt, ſuit, bill, plaint or information, in any of the king's courts at *Weſtminſter*, wherein no eſſoin, protection, privilege, injunction, wager of law, or ſtay of proſecution by *Non vult ulterius proſequi*, or otherwiſe, ſhall be admitted or allowed, or any more than one imparlance; (4) and any recovery or judgment at the ſuit of any party grieved, ſhall be a ſufficient conviction for the firſt offence; and any after recovery or judgment at the ſuit of a party grieved for any offence after the firſt judgment, ſhall be a ſufficient conviction to bring the officers or perſon within the ſaid penalty for the ſecond offence.

Perſons ſet at large not to be recommitted but by order of court.

Sect. 6. " *And for the prevention of unjuſt vexation by reiterated commitments for the ſame offence*; (2) Be it enacted by the authority aforeſaid, That no perſon or perſons, which ſhall be delivered or ſet at large upon any *habeas corpus*, ſhall at any time hereafter be again impriſoned or committed for the ſame offence, by any perſon or perſons whatſoever, other than by the legal order and proceſs of ſuch court wherein he or they ſhall be bound by recognizance to appear, or other court having juriſdiction of the cauſe; (3) and if any other perſon or perſons ſhall knowingly contrary to this act recommit or impriſon, or knowingly procure or cauſe to be recommitted or impriſoned for the ſame offence, or pretended offence, any perſon or perſons delivered or ſet at large, as aforeſaid, or be knowingly aiding or aſſiſting therein, then he or they ſhall forfeit to the priſoner or party grieved, the ſum of five hundred pounds; any colourable pretence or variation in the warrant or warrants of commitment notwithſtanding, to be recovered, as aforeſaid.

Perſons committed for treaſon or felony, ſhall be

Sect. 7. " Provided always, and be it further enacted, That if any perſon or perſons ſhall be committed for high treaſon or felony, plainly and ſpecially expreſſed in the warrant of commitment, upon his prayer or petition

tition in open court the firſt week of the term, or firſt day of the ſeſſions of *oyer* and *terminer*, or general gaol-delivery, to be brought to his trial, ſhall not be indicted ſome time in the next term, ſeſſions of *oyer* and *terminer*, or general gaol-delivery after ſuch commitment, it ſhall and may be lawful to and for the judges of the court of *King's Bench*, and juſtices of *oyer* and *terminer*, or general gaol-delivery, and they are hereby required, upon motion to them made in open court the laſt day of the term, ſeſſions or gaol-delivery, either by the priſoner, or any one in his behalf, to ſet at liberty the priſoner upon bail, unleſs it appear to the judges and juſtices upon oath made, that the witneſſes for the king could not be produced the ſame term, ſeſſions, or general gaol-delivery; (2) and if any perſon or perſons committed, as aforeſaid, upon his prayer or petition in open court the firſt week of the term, or firſt day of the ſeſſions of *oyer* and *terminer* and general gaol-delivery, to be brought to his trial, ſhall not be indicted and tried the ſecond term, ſeſſions of *oyer* and *terminer* or general gaol-delivery after his commitment, or upon his trial ſhall be acquitted, he ſhall be diſcharged from his impriſonment.

Indicted the next term, or let to bail.

And tried the term, &c. after, or diſcharged. 1 Ventr. 346.

Sect. 8. " Provided always, That nothing in this act ſhall extend to diſcharge out of priſon any perſon charged in debt, or other action, or with proceſs in any civil cauſe, but that after he ſhall be diſcharged of his impriſonment for ſuch his criminal offence, he ſhall be kept in cuſtody according to the law, for ſuch other ſuit.

Sect. 9. " Provided always, and be it enacted by the authority aforeſaid, That if any perſon or perſons, ſubjects of this realm, ſhall be committed to any priſon, or in cuſtody of any officer or officers whatſoever, for any criminal, or ſuppoſed criminal matter, that the ſaid perſon ſhall not be removed from the ſaid priſon and cuſtody, into the cuſtody of any other officer or officers; (2) unleſs it be by *habeas corpus*, or ſome other legal writ; or where the priſoner is delivered to the conſtable, or other inferior officer to carry ſuch priſoner to ſome common gaol; (3) or where any perſon is ſent by order of any judge of aſſize, or juſtice of the peace, to any common work-houſe or houſe of correction; (4) or where the priſoner is removed from one priſon or place to another within the ſame county, in order to his or her trial or diſcharge in due courſe of law; (5) or in caſe of ſudden fire or infection, or other neceſſity; (6) and if any perſon or perſons ſhall, after ſuch commitment aforeſaid, make out and ſign, or counterſign any warrant or warrants for ſuch removal aforeſaid, contrary to this act, as well he that makes or ſigns, or counterſigns ſuch warrant or warrants, as the officer or officers that obey or execute the ſame, ſhall ſuffer and incur the pains and forfeitures in this act before mentioned, both for the firſt and ſecond offence reſpectively, to be recovered in manner aforeſaid by the party grieved.

Sect. 10. " Provided alſo, and be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for any priſoner and priſoners, as aforeſaid, to move and obtain his or their *habeas corpus* as well out of the high court of *Chancery*, or court of *Exchequer*, as out of the courts of *King's Bench* or *Common Pleas*, or either of them;

The penalty for denying a *habeas corpus*.

(2) and if the ſaid lord chancellor or lord keeper, or any judge or judges, baron or barons for the time being, of the degree of the coif, of any of the courts aforeſaid, in the vacation-time, upon view of the copy or copies of the warrant or warrants of commitment or detainer, or upon oath made that ſuch copy or copies were denied, as aforeſaid, ſhall deny any writ of *habeas corpus* by this act required to be granted, being moved for, as aforeſaid, they ſhall ſeverally forfeit to the priſoner or party grieved, the ſum of five hundred pounds, to be recovered in manner aforeſaid.

Habeas corpus ſhall run into county palatine and privileged places.

Sect. 11. "And be it declared and enacted by the authority aforeſaid, That an *habeas corpus*, according to the true intent and meaning of this act, may be directed and run into any county palatine, the cinque-ports, or other privileged places within the kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, and the iſles of *Jerſey* or *Guernſey*; any law or uſage to the contrary notwithſtanding.

No ſubjects ſhall be ſent to foreign priſons.

2 Vent. 314.

Sect. 12. "*And for preventing illegal impriſonments in priſons beyond the ſeas*; (2) Be it further enacted by the authority aforeſaid, That no ſubject of this realm that now is, or hereafter ſhall be an inhabitant or reſiant of this kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, ſhall or may be ſent priſoner into *Scotland*, *Ireland*, *Jerſey*, *Guernſey*, *Tangier*, or into parts, garriſons, iſlands or places beyond the ſeas, which are, or at any time hereafter ſhall be within or without the dominions of his majeſty, his heirs or ſucceſſors; (3) and that every ſuch impriſonment is hereby enacted and adjudged to be illegal; (4) and that if any of the ſaid ſubjects now is, or hereafter ſhall be ſo impriſoned, every ſuch perſon and perſons ſo impriſoned ſhall and may for every ſuch impriſonment maintain, by virtue of this act, an action or actions of falſe impriſonment, in any of his majeſty's courts of record, againſt the perſon or perſons by whom he or ſhe ſhall be ſo committed, detained, impriſoned, ſent priſoner or tranſported, contrary to the true meaning of this act, and againſt all or any perſon or perſons that ſhall frame, contrive, write, ſeal or counterſign any warrant or writing for ſuch commitment, detainer, impriſonment or tranſportation, or ſhall be adviſing, aiding or aſſiſting in the ſame, or any of them; (5) and the plaintiff in every ſuch action ſhall have judgment to recover his treble coſts, beſides damages; which damages ſo to be given, ſhall not be leſs than five hundred pounds; (6) in which action no delay, ſtay or ſtop of proceeding by rule, order or command, nor no injunction, protection or privilege whatſoever, nor any more than one imparlance ſhall be allowed, excepting ſuch rule of the court wherein the action ſhall depend, made in open court, as ſhall be thought in juſtice neceſſary, for ſpecial cauſe to be expreſſed in the ſaid rule; (7) and the perſon or perſons who ſhall knowingly frame, contrive, write, ſeal or counterſign any warrant for ſuch commitment, detainer or tranſportation, or ſhall ſo commit, detain, impriſon or tranſport any perſon or perſons contrary to this act, or be any ways adviſing, aiding or aſſiſting therein, being lawfully convicted thereof, ſhall be diſabled from thenceforth to bear any office of truſt or profit within the ſaid realm of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, or any of the

Penalty.

the iſlands, territories or dominions thereunto belonging; (8) and ſhall incur and ſuſtain the pains, penalties and forfeitures limited, ordained and provided in and by the ſtatute of *proviſion* and præmunire, made in the ſixteenth year of king *Richard* the ſecond; (9) and be incapable of any pardon from the king, his heirs or ſucceſſors, of the ſaid forfeitures, loſſes, or diſabilities, or any of them.

Perſons receiving earneſt upon contracts to be tranſported, excepted.

Sect. 13. "Provided always, That nothing in this act extend to give benefit to any perſon, who ſhall by contract in writing agree with any merchant or owner of any plantation, or other perſon whatſoever, to be tranſported to any parts beyond the ſeas, and receive earneſt upon ſuch agreement, although that afterwards ſuch perſons ſhall renounce ſuch contract.

Perſons convicted of felony, and praying tranſportation excepted.

Sect. 14. "Provided always, and be it enacted, That if any perſon or perſons lawfully convicted of any felony, ſhall in open court pray to be tranſported beyond the ſeas, and the court ſhall think fit to leave him or them in priſon for that purpoſe, ſuch perſon or perſons may be tranſported into any parts beyond the ſeas; this act, or any thing therein contained to the contrary notwithſtanding.

Impriſonment before the firſt of June 1679, excepted.

Sect. 15. "Provided alſo, and be it enacted, That nothing herein contained, ſhall be deemed, conſtrued, or taken to extend to the impriſonment of any perſon before the firſt day of *June* one thouſand ſix hundred ſeventy and nine, or to any thing adviſed, procured, or otherwiſe done, relating to ſuch impriſonment; any thing herein contained to the contrary notwithſtanding.

Offenders may be ſent to be tried where their offences were committed.

Sect. 16. "Provided alſo, That if any perſon or perſons at any time reſiant in this realm, ſhall have committed any capital offence in *Scotland* or *Ireland*, or any of the iſlands, or foreign plantations of the king, his heirs or ſucceſſors, where he or ſhe ought to be tried for ſuch offence, ſuch perſon or perſons may be ſent to ſuch place, there to receive ſuch trial in ſuch manner as the ſame might have been uſed before the making of this act; any thing herein contained to the contrary notwithſtanding.

Proſecutions for offences within what time to be made.

Sect. 17. "Provided always, and be it enacted, That no perſon or perſons ſhall be ſued, impleaded, moleſted or troubled for any offence againſt this act, unleſs the party offending be ſued or impleaded for the ſame within two years at the moſt after ſuch time wherein the offence ſhall be committed, in caſe the party grieved ſhall not be then in priſon; and if he ſhall be in priſon, then within the ſpace of two years after the deceaſe of the perſon impriſoned, or his, or her delivery out of priſon, which ſhall firſt happen.

After the aſſiſes proclaimed, no priſoner to be removed, but before the judge of aſſiſe.

Sect. 18. "And to the intent no perſon may avoid his trial at the aſſiſes, or general gaol-delivery, by procuring his removal before the aſſiſes, at ſuch time as he cannot be brought back to receive his trial there; (2) Be it enacted, That after the aſſiſes proclaimed for that county where the priſoner is detained, no perſon ſhall be removed from the common gaol upon any *habeas corpus* granted in purſuance of this act, but upon any ſuch *habeas corpus* ſhall be brought before the judge of aſſiſe in open court, who is thereupon to do what to juſtice ſhall appertain.

Sect. 19. " Provided nevertheleſs, That after the aſſiſes are ended, any perſon or perſons detained may have his or her *habeas corpus*, according to the direction and intention of this act.

In ſuits for offence againſt this law, the defendants may plead the general iſſue, &c.

" *Sect.* 20. And be it alſo enacted by the authority aforeſaid, That if any information, ſuit or action ſhall be brought or exhibited againſt any perſon or perſons for any offence committed or to be committed againſt the form of this law, it ſhall be lawful for ſuch defendants to plead the general iſſue, that they are not guilty, or that they owe nothing, and to give ſuch ſpecial matter in evidence to the jury that ſhall try the ſame, which matter being pleaded, had been good and ſufficient matter in law to have diſcharged the ſaid defendant or defendants againſt the ſaid information, ſuit or action, and the ſaid matter ſhall be then as available to him or them, to all intents and purpoſes, as if he or they had ſufficiently pleaded, ſet forth or alledged the ſame Matter in bar or diſcharge of ſuch information, ſuit or action.

Sect. 21. " And becauſe many times perſons charged with petty treaſon or felony, or as acceſſaries thereunto, are committed upon ſuſpicion only, whereupon they are bailable or not, according as the circumſtances making out that ſuſpicion are more or leſs weighty, which are beſt known to the juſtices of peace that committed the perſons, and have the examinations before them, or to other juſtices of the peace in the county; (2) Be it therefore enacted, That where any perſon ſhall appear to be committed by any judge or juſtice of the peace, and charged as acceſſary before the fact, to any petty treaſon or felony, or upon ſuſpicion thereof, or with ſuſpicion of petty treaſon or felony, which petty treaſon or felony ſhall be plainly and ſpecially expreſſed in the warrant of commitment, that ſuch perſon ſhall not be removed or bailed by virtue of this act, or in any other manner than they might have been before the making of this act."

Perſons committed as acceſſaries before to petty treaſon or felony, ſhall not be removed or bailed otherwiſe than before this act made.

A *habeas corpus* had been iſſued during the laſt vacation, by lord *Mansfield*, bearing teſte the 8th inſtant, being the laſt day of the preceding term, directed to *James Clarke* eſq; commanding him to *have before his lordſhip* AT HIS CHAMBERS in *Serjeants-Inn*, immediately, the body of *Lydia Henrietta Clarke*, his daughter, then detained in his cuſtody, together with the day and cauſe of her taking and detainer; then and there to undergo and receive what his majeſty's ſaid chief juſtice ſhould then and there conſider of, concerning her in this behalf. The writ was now returned *here in court*; and the ſaid *Lydia Henrietta Clarke* produced.

Habeas corpus for a young lady who had been decoyed away from her parents. 1 Bur. Rep. 606. Friday 26 May 1758. Trin. 31 Geo. 2. Rex v. James Clarke, Eſq;

Mr. *Clarke* the young lady's father, *returned*, That ſhe was *his* DAUGHTER; and that on the 22d of *March* laſt, She, without any leave or notice to him or to his wife (her mother) ſecretly went away from his houſe in *Great Ormond-ſtreet*, and took with her a box or bundle containing ſeveral ſorts of wearing-apparel, and about 27 *l.* in money.

That in about twelve or fourteen days time, he being credibly informed " that his ſaid daughter had been INVEIGLED *away* from him *by the inſtigation* of one *James Mervin*, a perſon of NO *viſible occupation or ſubſtance*, nor keeping any houſe; *with* DESIGN TO MARRY *her to one Joſeph Iſgrave*, who

who is under age; and who about two years ago *ſerved* the ſaid *James Clarke as a* FOOT BOY, and *is yet in no better condition*; and that they were all gone together into the *Iſle of Thanet*, where they were to *get a* LICENCE *for ſuch marriage*;" He being under great concern for the welfare of his ſaid daughter, and in order to *prevent* the ſaid marriage (ſhe being *intitled to a conſiderable fortune*, after her ſaid mother's death, and being likewiſe *his* ONLY *child*,) took a journey to find them out, and if (in his power) *to prevent the ſaid intended marriage*; and gave directions to his nephew Mr. *Peter Starkie Floyer*, to go in queſt of them, and if he found them, to endeavour to prevent the marriage, and to bring his ſaid daughter to him.

That his ſaid nephew found them out at a place called *Broad Stairs*, in the iſle of *Thanet*. Where the ſaid *James Mervin* repreſented himſelf as, and *paſſed for*, the uncle of the ſaid daughter.

That the ſaid *Lydia Henrietta Clarke* came home with his ſaid nephew to his (the ſaid *James Clarke's*) houſe in *Great Ormond-Street*: Where ſhe arrived the 7th of *April* laſt: And the ſaid *James Mervin* came with her as far as *Canterbury*: But the ſaid *Joſeph Iſgrave* run away; and the ſaid *James Mervin* pretends he is gone to *Holland*.

That on her being thus brought home to him, he did, in the *tendereſt manner*, repreſent to her the ruin ſhe was inevitably falling into, if ſhe purſued a deſign to marry a perſon ſo much inferior to herſelf; and who, having no viſible way of livelihood, muſt reduce her to the utmoſt neceſſity and want, as well as diſgrace and ſhame. Whereupon ſhe aſſuring her ſaid father "That ſhe was *not* married," He, through his duty as a parent, and from the affection he bore towards her, did receive her into his houſe, and the *mildeſt and beſt endeavours* have been uſed *to diſſuade her from ſuch* marriage; ſuch *endeavours extending no further* than what he humbly conceives to be conſiſtent with that parental care which *may* be uſed *by a father* towards his child: And NO SEVERITY *whatſoever* hath been uſed to her.

That ſhe hath ever ſince the ſaid 7th day of *April* laſt, (when ſhe came home to his houſe as aforeſaid) hitherto, OF HER OWN ACCORD, continued to live and reſide with him, (her father) and ſtill doth live and reſide with him at his ſaid houſe, *of* HER OWN ACCORD, *and under* NO *reſtraint whatſoever*. And there is no other cauſe of detaining the ſaid *L. H. C. &c.*

Note—This *habeas corpus* was iſſued upon an affidavit made by the above named *James Mervin*; who made out a very plauſible caſe, fully ſufficient, (if true) to obtain the writ; but which was now alledged by Mr. *Norton*, (of counſel with Mr. *Clarke*,) to be abſolutely and utterly FALSE *in fact*. In it the young lady was ſworn to be of *full age (viz.* about 22.) which was true: But it *alſo* alledged "That ſhe had been *hardly uſed*, and *confined*, by her father," And *other circumſtances*, which were falſe. Note alſo—That although this *habeas corpus* directed her to be brought before *lord Mansfield* AT HIS CHAMBERS; and although ſhe *was actually brought* before *him* whilſt he was ſitting at *Guildhall* on *Wedneſday* laſt; yet, the father deſiring to have an opportunity to take the advice of a counſel, in ſettling the return; and the young lady declaring publickly,

"She

"She had no objection to continue with her father, who always uſed her with great tenderneſs, and much better than ſhe deſerved;" His lordſhip judged it proper to *adjourn* it, and direct her to be brought *into court* the firſt day of term, the rather too, that ſhe might have a chance of being better adviſed: For if ſhe had been then taken from her father, it was plain ſhe would have purſued her improvident deſign; and *Mervin* appeared at *Guildhall*, ready to have carried her off. She was *now brought into* COURT by *virtue of the* SAME *writ*, which was returnable *before* HIS *lordſhip, at his* CHAMBERS *immediate.*

Lord *Mansfield*, now only aſked her, "Whether ſhe deſired to continue with her father, or to go elſewhere." She anſwered — "To *continue* with her father." Upon which, The court told her, ſhe was at liberty to go. Which ſhe accordingly did. Then Mr. *Norton* moved that *Mervin's affidavit* might be FILED, (together with the return of the writ;) as Mr. *Clarke* was determined to proſecute him for *Perjury*. The court ordered it to be ſo; and recommended the proſecution very ſtrongly to Mr. *Clarke*.

No peer or lord of parliament hath privilege againſt being compelled to pay obedience to a writ of *habeas corpus* directed to him. 1 Bur. Rep. 631. Trin. 31 Geo. 2. Rex v. Earl Ferrers.

On *Wedneſday* 26th *January* 1757, Mr. *Norton* moved, either for an attachment againſt the earl for not returning a *Habeas Corpus* already iſſued, and returnable *immediatè*, commanding him to bring up the body of his counteſs (ſiſter to Sir *William Meredith*,) *or* for a new *Habeas Corpus*, ACCOMPANIED *with an Attachment.* He ſaid the latter had been done in the caſe of *Rex v. Dr. Wright*, *Mich.* 5 *G.* 2. *B. R*; and that the reaſon of iſſuing the attachment at the ſame time with the *Habeas Corpus*, was for prevention of a delay which might, in certain caſes, render the remedy ineffectual. Lord *Mansfield* aſked Mr. *Norton*, whether He knew any inſtance of an *attachment* ACCOMPANYING a writ. He ſaid he underſtood an attachment going, for *not having* obeyed a writ: But did not know any inſtance of an attachment going out *together with* the writ. Mr. *Norton* ſtated *Wright*'s caſe, from a note taken by a gentleman who has now left the bar; where *Lee*, then a puiſne judge, held it *might* be done. Though, in that caſe, *Wright* did afterwards return the writ in court. Note—In the preſent caſe Mr. Juſtice *Foſter* had granted a *habeas corpus:* which was ſerved on the earl, by Sir *William Meredith*: But Sir *William* at length agreed not to proſecute it; on condition that his lordſhip ſhould carry lady *Ferrers* to *Bath*; which the earl promiſed, but had not performed. Mr. *Norton* ſaid he would take nothing by his motion. And Mr. *Clayton* moved for a *new* writ, returnable in court *immediate.*

Lord *Ferrers* neglecting likewiſe to obey this *ſecond* writ of *habeas corpus*, the counſel for Sir *William Meredith* (on behalf of his ſiſter) intended, on *Tueſday* the 8th of *February* 1757 to have moved for an attachment againſt lord *Ferrers*, for this his diſobedience: But ſome doubts and difficulties having been ſtarted by members of both houſes, concerning the *Privilege of* PEERAGE; and "Whether the court of *King's Bench* could iſſue an ATTACHMENT *againſt a peer* during the ſitting of parliament, and execute it upon him, ONLY *for a* CONTEMPT to their court," Sir *William Meredith* judged it prudent to petition the houſe of lords, for their leave to proceed againſt the earl; and accordingly did yeſterday (by the hands of the earl

earl of *Weſtmoreland*) deliver ſuch petition ſtating the facts. Lord *Delawar* oppoſed it, and ſaid it was too ſummary and too haſty a method of determining upon their privileges; and propoſed referring the matter to a committee, and ſummoning lord *Ferrers* to anſwer it in his place: and to obviate the objections which might be made to this method on account of the delay; He offered ſome ſchemes for the intermediate ſafety of the counteſs. But lord *Mansfield* anſwered him, and ſpoke in ſupport of the juriſdiction of his court, and the unreaſonableneſs, injuſtice and inconvenience of allowing ſuch a privilege in *criminal* caſes and *breaches of the peace.* The duke of *Argyle* then ſpoke to the like effect, and expreſſed a ſurprize that there ſhould be any doubt about it; the reaſon of the thing being ſo clear and plain. Laſtly, the earl of *Hardwicke* ſpoke ſtrongly and particularly in ſupport of the ſame doctrine, and adduced many inſtances and precedents in proof of his poſitions; and concluded with propoſing, that to put an end to all doubt about it for the future, the lords ſhould come to a reſolution; and accordingly they did come to the following reſolution or declaration, and ordered it to be entered on their journal; *viz.* "7 *Februarii* 1757. It is ordered and declared, That no peer or lord of parliament hath privilege againſt being compelled by proceſs of the courts of *Weſtminſter-Hall* to pay obedience to a writ of *habeas corpus* directed to him." (and it was afterwards, *viz.* "*Die Mercurii* 8 *Junii* 1757. Ordered and declared by the lords ſpiritual and temporal in parliament aſſembled, That no peer or lord of parliament hath privilege of *peerage* or of *Parliament*, againſt being compelled by proceſs of the courts in *Weſtminſter-Hall*, to pay obedience to a writ *habeas corpus* directed to him." And it was then and thereby further ordered, "That this order and declaration be entered upon the roll of the *ſtanding orders* of this houſe.")

On the 8th of *February* 1757, Mr. *Norton* renewed his motion for an attachment againſt the earl: And he produced affidavits of his lordſhip's diſobedience to the writ, and continuing his ill uſage of his lady. *All* the affidavits (quite from the beginning of this affair) were read. Lord *Mansfield:* This is a *habeas corpus* at *common law*; which is a prerogative writ, for the liberty of the ſubject. The court may inforce ſpeedy obedience to it: And the *circumſtances* of *this* caſe (where delay may be very dangerous,) require it. It is reaſonable that the lady ſhould have opportunity of laying her caſe before the court; and ſwearing the peace, if ſhe thinks proper, in order to obtain the protection of the court. The *end* of this courſe that we now take, in iſſuing an attachment to enforce obedience to the writ, is to have this lady produced for this purpoſe. And therefore we think, *under the* EXTRAORDINARY *circumſtances* of this caſe, an *attachment* ſhould iſſue; *to inforce obedience* to this writ of *habeas corpus*, which ſo much affects the preſervation and ſecurity of this lady. But at the ſame time, his lordſhip intimated to them, *not* to EXECUTE it AT ALL, if it was poſſible to *obtain the end* of their application by any *gentler or other means*; the end and intention of granting it, being only to have the lady immediately brought up. Mr. juſtice *Deniſon* (the only other judge in court) only ſaid "that an attachment *ought to go.*" Ordered that a writ of attachment

ment iſſue againſt the right honourable *Laurence* earl *Ferrers*. In conſequence whereof, the earl having been ſerved with the writ, (or at leaſt having had it notified to him) by the under-ſheriff of *Leiceſterſhire*, accompained by a brother of the counteſs: —On the *Saturday* following He appeared in *Weſtminſter-Hall*, and about one o'clock, ſent a meſſuage into court, to lord *Mansfield*, deſiring to ſpeak with him." Lord *Mansfield* bid the meſſenger tell his lordſhip, "That when an affair was depending before the court, he could not ſpeak with any body about it *but* IN *court*."

Soon after, the earl came upon the bench, and ſpoke to lord *Mansfield*. It was not eaſy to underſtand what he ſaid, as he ſpoke pretty low: But I imagine he propoſed putting ſome certain queſtions to his lady; for lord *Mansfield*'s anſwer was, "That when ſhe came into court all *proper* queſtions would be aſked her." Some time afterwards, on the ſame day—lady *Ferrers* came into court, and had articles of the peace ready to exhibit againſt the earl. Note—nothing more was ſaid concerning the *habeas corpus* or the *return of it*, the real end of it being ſufficiently anſwered, by her being left at liberty to come to this court, in order to obtain its protection. Sir *Richard Lloyd* and Mr. *Gould*, for the earl, deſired leave to aſk lady *Ferrers* one or two queſtions previous to her ſwearing to the articles which ſhe had prayed leave to exhibit. But lord *Mansfield* told her *ladyſhip*, that ſhe was *not obliged* to anſwer any queſtion previous to her ſwearing the peace. And he told Sir *Richard* that the preſent buſineſs was only to obtain ſecurity of the peace. Juſt at this time, the earl came into the body of the court, (upon the floor, not upon the bench; and deſired to aſk lady *Ferrers* "Whether an affidavit which ſhe had lately made, in the country, before a commiſſioner authorized by this court to take affidavits was made by her *voluntarily or involuntarily*." Note — This was an affidavit (in which ſhe had joined, during her being in his power in the country, after the iſſuing of the *habeas corpeus*;) wherein ſhe was made to ſwear" That ſhe was content to remain with her huſband, that ſhe had no complaint againſt him, and that the application made by her relations for the *habeas corpus* was without her deſire and againſt her will." Which affidavit *her friends* ſaid was ſo far from being voluntary, that it was *extorted* from her *under dureſs*; and was the mere effect of fear force, and compulſion, or at leaſt of very *undue unfluence*.

Lord *Mansfield* perſevered in permitting her ladyſhip, without anſwering any queſtion, to proceed in exhibiting her articles; and then aſked the earl, "If he had ſecurity ready." The earl firſt, and Sir *Richard*, afterwards, preſſed that lady *Ferrers* might anſwer their queſtions. And Sir *Richard* dropped an intimation that the earl's regard or diſregard for her would depend upon her anſwers. But lord *Mansfield* ſaid he had before told her, that ſhe *need not* anſwer them. And now he would *not ſuffer* her, he ſaid, to anſwer them. Lord *Ferrers* went in and out of court once or twice. But did not, at *this* time, give the ſecurity of the peace; nor did Mr. *Norton* preſs that he ſhould give it immediately. On *Wedneſday* the 27th of *April* following

following, the earl appeared; and gave ſecurity: himſelf in 5000*l.* And each manucaptor in 2500*l.*

Monday, 13th *February* 1758. The earl having broken this recognizance in the month of *Auguſt* 1757, by drawing a piſtol upon lady *Ferrers*, at the earl of *Weſtmoreland*'s at *Mereworth caſtle* in *Kent*; He was taken up ſome time after, again, upon a freſh warrant from lord *Mansfield:* And having given bail on the ſame 13th day of *February* 1758, before my lord chief juſtice (whilſt his lordſhip was gone out to dinner,) he preſently afterwards came into court, to appear. And upon the return of the lord chief juſtice—The counteſs alſo came into court; and *ſwore* FRESH *articles* of the peace againſt the ſaid earl, grounded upon the above mentioned fact. After which, he (being ſtill preſent) was called upon to give bail to theſe recent articles of the peace. He had previouſly given notice of two perſons to be his bail before the lord chief juſtice: With one of which the proſecutors were not ſatisfied. After ſeveral propoſals; and after ſeveral hints which came from lord *Mansfield*, as well as from Mr. *Norton*, "That it was neceſſary for the earl to give bail *at preſent*, and not to pray *time* to do ſo, as the giving it *now* was the only method he could take, if he expected to remain at liberty;" It ended in a compromiſe to take both theſe perſons as bail now, and to give a few days time for the juſtifying the doubtful one, (a peruke maker,) or for finding a better. Accordingly he himſelf became bound in 5000*l.* Mrs. *Shirley* (his mother,) in 2500*l.* and Mr. *John Bennifold*, peruke-maker, in 2500*l.* The earl's counſel *now* moved to diſcharge the recognizance. To which the lady's counſel afterwards conſented.

Habeas corpus for a wife. 1 Bur. Rep. 542. Eaſt. 31 Geo. 2. Rex v. Mary Mead.

A *habeas corpus* having iſſued in the laſt vacation, at the inſtance of *John Wilkes*, eſq; to bring up the body of *Mary Wilkes*, wife of the ſaid *John Wilkes*, and daughter of the ſaid *Mary Mead*, before Mr. juſtice *Deniſon*; Mrs. *Mead* now brought her *into court*. The ſubſtance of the return was, That her huſband (having uſed her very ill,) *in conſideration* of a great ſum which ſhe gave him out of her ſeparate eſtate, *conſented* to her living alone, executed *articles of ſeparation*, and *covenanted* (under a large penalty) never to diſturb her or any perſon with whom ſhe ſhould live. That ſhe lived with her mother, at her *own* earneſt deſire, and that this writ of *habeas corpus* was taken out with a view of ſeizing her by force, or ſome other *bad purpoſe*. The court held this to be a formal renunciation by the huſband, of his marital right to ſeize her, or force her back to live with him. And they ſaid that any *attempt* of the huſband to ſeize her by force and violence, would be *a breach of the peace*. They alſo declared that any attempt made by the huſband, to moleſt her *in her preſent return from Weſtminſter-Hall*, would be a *contempt* of the court. And they told the lady, ſhe was at full liberty to go where, and to whom ſhe pleaſed. See *Rex v. Clarkſon et al.* 2 *Strange* 444, 445: Where the court only took care that the young lady ſhould be under no illegal reſtraint, and ordered a tip-ſtaff to ſee her ſafe home, to her guardian's, as had been formerly done in lady *Harriot Berkley*'s caſe. *Rex v. Captain Liſter, huſband of lady Rawlinſon*, 1 *Strange* 478. Lady *Vane*'s caſe *M. & H.* 17 *G.* 2. *B. R.*

Rex v. Johnſon, 1 *Strange* 579. *H.* 19 *G.* 2. 2 *Ld. Raym.* 1334 *S. C.* A child was *delivered* to its proper *Guardian*, by the court. *Rex v. Smith*, 2 *Strange* 982: Where indeed the boy was *only ſet at liberty*; and *Johnſon*'s caſe was ſaid to be carried *too far*, *Rex v. Griffith. H.* 8 *W.* 3. *B. R.* And lady *Catherine Anneſley*'s caſe.

Habeas corpus iſſued in vacation, and returnable immediately before a judge at his chambers, does not expire, by the coming in of the term; but the defendant may be brought into court at Weſtminſter upon the old writ. 1 Bur. Rep. 460. Hil. 31 Geo. 2. Rex v. Dr. Shebbeare.

The doctor was brought up to be bailed. But had not bail ready. Note—He was now brought up by virtue of a *habeas corpus* ISSUED by the lord chief juſtice in the *vacation*, returnable *immediatè*, before himſelf *at his chambers*. Upon Dr. *Shebbeare*'s mentioning that he had been informed "That, as the term was begun, it was neceſſary to take out a *new* writ of *habeas corpus*, to bring him into court;" And the officers on the crown-ſide having ſaid that *their* notion of the practice was, "That, the *term being begun*, the old writ was *expired*, and it was neceſſary to take out a *new* one; lord *Mansfield* declared the court to be unanimouſly of opinion that ſuch notion was *ill founded*; That a perſon might be brought into court upon a *habeas corpus* iſſued in the *vacation*; and that to require a new writ, would be attended with delay and expence, without the leaſt reaſon or utility. Lord *Mansfield*—If you have not bail, we cannot commit you to the ſame cuſtody you came hither in, (which was that of Mr. *Carrington*, one of the king's meſſengers;) but muſt commit you to our marſhal: And you will then be obliged to ſue out your *habeas corpus* again; but may be brought up from the priſon of this court, by a *rule* of court, whenever you ſhall be prepared to give bail. Accordingly, the doctor, being charged with two warrants under the hand and ſeal of the ſecretary of ſtate, which appeared upon the return to the *habeas corpus*, was COMMITTED to the cuſtody of the *marſhal* of this court.

An impreſſed man in cuſtody at the Savoy, brought up by his bail, in order to be ſurrendered by them in their diſcharge, was firſt committed to the Marſhal, with orders to deliver him *inſtanter* to the keeper of the Savoy; and an *exoneretur* was entered. 1 Bur Rep. 339 Eaſt. 30 G. 2. Bond v. Iſaac.

The defendant being brought into court, in obedience to a writ of *habeas corpus* applied for by his *bail*; and it being agreed that He was in cuſtody of the keeper of the *Savoy*, as an *impreſſed man*; the counſel in behalf of the *bail* inſiſted upon their *right* TO SURRENDER Him.

Cur' (namely, Lord *Mansfield*, Mr. juſt. *Deniſon*, and Mr. juſt. *Foſter*) had no doubt of their right: but only heſitated as to the *diſpoſition of Him*, after He had been ſurrendered. Lord *Mansfield* mentioned the clauſe in the preſſing act (*V.* 29 *G.* 2. *c.* 4. *ſ.* 14. *p.* 175.) of not taking Him out of the ſervice. Mr. juſt. *Deniſon* cited two caſes; *viz.* 1 *Strange* 641. The caſe of the bail of *Boiſe* and *Sellers*, in this court; where the defendants were returned to be charged with two civil ſuits and ſeveral *Exchequer informations* for frauds in the cuſtoms: and when the court was ſatisfied of the reality of the debts and priority of the actions here, the defendants were ſurrendered, and committed *to the Marſhal*. And a caſe in *Tr.* 22, 23 *G.* 2. *Rex* v. *Chitty*, *B. R.* where the defendant was returned to be charged with a *contempt in the Exchequer*: He was ſurrendered by his bail here; and committed to the marſhal; who was immediately ſerved with a new *habeas corpus*, to remove him to the *Fleet*.

This man is a ſoldier now: and by this act cannot be taken out of the king's ſervice, but upon ſome *criminal* matter (*V.* the act, as above.) So that it ſeems that He *may* be remanded to the *Savoy*, in the preſent caſe.

Mr. juſt. *Foſter*——In the caſes cited by my brother *Deniſon*, the proceedings were grounded on 25 *Ed.* 3. *c.* 19. (which enacts "that the King's debtors ſhall not be protected from the proceedings of their other creditors againſt them:) and it was a matter of *right*. This is an *indulgence* to the bail, to permit them to bring in the defendant and ſurrender him. But we cannot take him out of the King's *ſervice*; this not being a *criminal* matter: (V. *ut ſupra*, 29 *Geo.* 2. *c.* 4. *ſ.* 14.) So that We *may*, after We have entered an *exoneretur* upon the bail-piece, remand him to the legal cuſtody at the *Savoy*.

Lord *Mansfield*——We may *firſt* commit him to the marſhal; and *then* remand him, immediately, to the *Savoy*.

Suppoſe him to be a ſoldier at *large* (not in cuſtody;) and that his bail were to bring him in and ſurrender him: He muſt be committed to the cuſtody of the *Marſhal* upon ſuch ſurrender; but *inſtanter ſet at large:* And ſo we may do here. And accordingly, *per Cur.* He was, upon being ſurrendered by his bail, firſt committed to the cuſtody of the Marſhal: but the Marſhal was ordered to deliver him *inſtanter* to the keeper of the *Savoy*; and he did ſo, immediately in court. And an *exoneretur* was ordered to be entered upon the bail-piece.

Inſpection of a perſon confined in a mad-houſe was ordered to be had by proper perſons, previous to granting a *habeas corpus*. 2 Bur. Rep. 1115. Hil. 1 Geo. 3. in B. R. Rex v. Turlington.

On *Saturday* laſt, the 24th of *January*, a motion was made for a *habeas corpus* to be directed to *Turlington*, the keeper of a private *mad-houſe*, commanding him to bring up the body of Mrs. *Deborah d'Vebre*, who was confined there by her own huſband. The court thought it fit to have a previous inſpection of Her, by proper perſons, phyſicians and relations; and then to proceed, as the truth ſhould come out upon ſuch inſpection. And a caſe was hinted at where an inſpection was ordered, in the laſt term. A rule was accordingly made, "That doctor *Robert Monroe*, *Peter Bodkin*, (her relation) and *Edmund Kelly* (her attorney) ſhall at all proper times and ſeaſonable hours, reſpectively be admitted and have free acceſs to Mrs. *Deborah d'Vebre*, the wife of *Gabriel d'Vebre*, in the affidavit mentioned, at the *mad-houſe* kept by *Robert Turlington*, at *Chelſea*, in order to conſult with, adviſe and aſſiſt the ſaid *Deborah d'Vebre*." On *Monday* the 26th, an affidavit of Dr. *Monroe*'s was read; and Dr. *Monroe* alſo perſonally aſſured the court, "That He had ſeen and converſed with this woman, and examined her nurſe; and ſaw no ſort of reaſon to ſuſpect that ſhe was or had been diſordered in her mind: on the contrary, He found Her to be very ſenſible, and very cool and diſpaſſionate." Lord *Manſfield*——Take a writ of *habeas corpus:* and if this ſhould appear to be the caſe we ought to go further. Mrs. *d'Vebre* was now brought into court by Mr. *Turlington*. But no return was indorſed upon the writ. She appeared to be abſolutely free from the leaſt appearance of inſanity. She was prepared to have ſworn articles of the peace againſt her huſband; and they were offered in court, ready ingroſſed; but not being ſtamped, they could not be read. She was permitted to go away with her attorney, to his houſe, He undertaking to produce her here to-morrow morning. Note——She deſired not to go back to the *mad-houſe:* and the court would not permit her huſband to take Her, under the preſent circum-

ſtances of danger apprehended by Her from Him. It afterwards ended in a compromiſe, and an agreement to ſeparate.

21 Jac. 1. c. 26.

Stat. 21 *Jac.* 1. *c.* 26. [*A. D.* 1623. *intituled*] "An act againſt ſuch as ſhall levy any fine, ſuffer any recovery, knowledge any ſtatute, recognizance, bail or judgment, in the name of any other perſon or perſons not being privy and conſenting thereto."

"Whereas it is of late grown to be a great and general grievance to his majeſty's ſubjects within the realm of *England*, and the dominion of *Wales*, that many lewd perſons of baſe condition, for every little reward or recompence, have of late years uſed, and ſtill do uſe to levy fines, and ſuffer recoveries of lands and other hereditaments, to acknowledge ſtatutes, recognizances, bails and judgments, in the name or names of any other perſon or perſons not privy or conſenting to the ſame, which hath and daily doth turn to the great inquietation, charge, trouble and undoing of many of the good ſubjects of this kingdom, and the rather, for that there is no remedy in law to reform theſe and the like abuſes:

It is felony to levy a fine, ſuffer a recovery, &c. in another's name not privy thereto. 1 Ventr. 301. Jones Sir T. 64.

Sect. 2. "For remedy whereof, Be it enacted by the king's moſt excellent majeſty, the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and every perſon and perſons, which at any time after the end of this preſent ſeſſion of parliament ſhall acknowledge, or procure to be acknowledged, any fine or fines, recovery or recoveries, deed or deeds inrolled, ſtatute or ſtatutes, recognizance or recognizances, bail or bails, judgment or judgments, in the name or names of any other perſon or perſons not privy or conſenting to the ſame, and being thereof lawfully convicted or attainted, ſhall be adjudged, eſteemed and taken to be felons; (2) and ſuffer the pains of death, and incur ſuch forfeitures and penalties, as felons in other caſes convicted or attainted, do by the laws of *England* loſe and forfeit, without the benefit or privilege of clergy to be allowed to any ſuch offender or offenders. (3) Provided always, That ſuch attainder ſhall not be any corruption of blood, nor loſs of dower to the wife, but the next heir ſhall have the lands whereof ſuch perſons attainted died ſeiſed, and ſuch wife her dower, as if no ſuch attainder had been had.

This felony ſhall not corrupt the blood, nor take away dower.

An attorney may do it for another man.

Sect. 3. "Provided always, and be it likewiſe enacted by the authority aforeſaid, That this act ſhall not extend to any judgment or judgments acknowledged by any attorney or attornies of record, for any perſon or perſons againſt whom any ſuch judgment or judgments ſhall be had or given."

Where bail is perſonated, he cannot be diſcharged till the offender is convicted. 1 Vent. 301. Mich. 28 Car. 2. in B. R. Beaſley's caſe.

He was taken in execution upon a recognizance of bail, and he made it appear to the court, That he never acknowledged the recognizance, but was perſonated by another; and thereupon it was moved, that the bail might be vacated and he diſcharged, as was done in *Cotton*'s caſe, 2 *Cro.* 256. But the court ſaid, Since 21 *Jac. c.* 26. by which this offence was made felony (without clergy,) it is not convenient to vacate it until the offender is convicted; and ſo it was done 22 *Car.* 2. in *Spicer*'s caſe; where-

wherefore it was ordered, that *Beaſley* ſhould bring the money into court, and be let at large to proſecute the offender. *Twiſden* ſaid, It muſt be tried in *Middleſex*, tho' the bail was taken at a judge's chambers in *London*, becauſe filed here; and the entry is *venit coram Domino Rege, &c.* ſo it differs from a recognizance acknowledged before my lord *Hobart*, upon 23 *H.* 8. at his chamber, and recorded in *Middleſex*, *Hob. Rep.* 195, 196. If a falſe bail is acknowledged, it is not felony, unleſs it be filed, and ſo held in *Timberley*'s caſe.

Two people put in bail in feigned names, and becauſe there were no ſuch perſons, they could not be proſecuted for *perſonating* bail on the ſtat. 21 *Jac.* 1. *c.* 26. ſo the court ordered them and the attorney to be ſet in the pillory, which was done accordingly. Feigning bail, cauſe for the pillory. 1 Stran. 384. Trin. 6 G. 1. Anon. in C. B.

A bail taken before a judge is not a bail within this ſtatute till it be filed of record, and if it be not filed, the acknowledging thereof in another's name makes not felony, but a miſdemeanor only. 1 *Hale H. P. C.* 696. But this is made felony by the following ſtatute.

Stat. 4 *Will. & Ma. c.* 4. [*A. D.* 1692. *intituled*] "An act for taking ſpecial bails in the country, upon actions and ſuits depending in the courts of *King's Bench*, *Common Pleas*, and *Exchequer* at *Weſtminſter*." 4 Will. & M. c. 4.

"For the greater eaſe and benefit of all perſons whatſoever, in taking the recognizances of ſpecial bails upon all actions and ſuits depending, or to be depending, in any of the courts of *King's Bench*, *Common Pleas*, or *Exchequer* at *Weſtminſter*, Be it enacted by the king's and queen's moſt excellent majeſties, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That the chief juſtice, and other the juſtices of the court of *King's Bench* for the time being, or any two of them, whereof the chief juſtice for the time being to be one for the ſaid court of *King's Bench*, and the chief juſtice of the court of *Common Pleas*, and other the juſtices there for the time being, or any two of them, whereof the chief juſtice of the ſame court to be one for the ſaid court of *Common Pleas*, and alſo the chief baron and barons of the quoif of the court of *Exchequer* for the time being, or any two of them, whereof the chief baron for the time being to be one for the ſaid court of *Exchequer*, ſhall or may, by one or more commiſſion or commiſſions under the ſeveral ſeals of the ſaid reſpective courts, from time to time, as need ſhall require, impower ſuch and ſo many perſons, other than common attorneys and ſolicitors, as they ſhall think fit and neceſſary, in all and every the ſeveral ſhires and counties within the kingdom of *England*, dominion of *Wales*, and town of *Berwick* upon *Tweed*, to take and receive all and every ſuch recognizance or recognizances of bail or bails, as any perſon or perſons ſhall be willing or deſirous to acknowledge or make before any of the perſons ſo impowered in any action or ſuit, depending or hereafter to be depending in the ſaid reſpective courts, or any of them, in ſuch manner and form, and by ſuch recognizance or bail-piece, as the

Chief juſtice, &c. may make any perſons, except attorneys and ſolicitors, commiſſioners to take bail in the country:

Juſtices, &c. to receive the bail-piece upon affidavit of due execution.

juſtices and barons of the ſaid reſpective courts have uſed to take the ſame; which ſaid recognizance or recognizances of bail or bail-piece, ſo taken as aforeſaid, ſhall be tranſmitted to ſome or one of the juſtices or barons of the ſaid reſpective courts where ſuch action or ſuit ſhall be depending, who, upon affidavit made of the due taking of the recognizance of ſuch bail or bail-piece by ſome credible perſon preſent at the taking thereof, ſuch juſtice or baron ſhall receive the ſame upon payment of ſuch fees as have been uſually received for the taking of ſpecial bails by the juſtices and barons clerks, and other the officers of the ſaid reſpective courts; which recognizance of bail or bail-piece ſo taken and tranſmitted, ſhall be of the like effect as if the ſame were taken *de bene eſſe* before any of the ſaid juſtices and barons; for the taking of every which recognizance or recognizances of bail or bail-piece, the perſon or perſons ſo impowered ſhall receive only the ſum or fee of two ſhillings, and no more.

Bail taken below to be *de bene eſſe*. Commiſſioners fee.

Power given to juſtices, &c. to make rules for juſtifying, but not to order the perſon's appearance.

Sect. 2. "And be it further enacted by the authority aforeſaid, That the juſtices and barons reſpectively in the ſeveral courts ſhall make ſuch rules and orders for the juſtifying of ſuch bails, and making of the ſame abſolute, as to them ſhall ſeem meet, ſo as the cognizor or cognizors of ſuch bail or bails be not compelled to appear in perſon in any of the ſaid courts, to juſtify him or themſelves, but the ſame may and is hereby directed to be determined by affidavit or affidavits duly taken before the ſaid commiſſioners, who are hereby impowered and required to take the ſame, and alſo to examine the ſureties upon oath, touching the value of their reſpective eſtates; unleſs the cognizor or cognizors of ſuch bail do live within the cities of *London* and *Weſtminſter*, or within ten miles thereof.

London, &c. ſaved.

Juſticcs of aſſize may take bail.

Sect. 3. "And be it further enacted by the authority aforeſaid, That any judge of aſſize in his circuit ſhall and may take and receive all and every ſuch recognizance and recognizances of bail or bails, as any perſon ſhall be willing and deſirous to make and acknowledge before him, which being tranſmitted in like manner as aforeſaid, ſhall (without oath) be received in manner as aforeſaid, upon payment of the uſual fees.

Felony for any perſon to be bail in another man's name.

Sect. 4. "And be it further enacted by the authority aforeſaid, That any perſon or perſons, who ſhall (before any perſon or perſons impowered by virtue of this act, as aforeſaid, to take bail or bails) repreſent or perſonate any other perſon or perſons, whereby the perſon or perſons ſo repreſented and perſonated may be liable to the payment of any ſum or ſums of money for debt or damages to be recovered in the ſame ſuit or action, wherein ſuch perſon or perſons are repreſented and perſonated, as if they had really acknowledged and entred into the ſame, being lawfully convicted thereof, ſhall be adjudged, eſteemed, and taken to be felons, and ſuffer the pains of death, and incur ſuch forfeitures and penalties as felons in other caſes convicted or attainted do by the law of *England* loſe and forfeit."

Baker.

A BAKER is a perſon whoſe *trade* is to bake. *Johnſ.* By ſtatute 29 *Car.* 2. *c.* 7. [*A. D.* 1676. *intituled*, " An act for the better obſervation of the Lord's day, commonly called *Sunday*"] *ſect.* 1. it is enacted, " That no *tradeſman*, artificer, workman, labourer, or other perſon whatſoever, ſhall do or exerciſe any worldly labour, buſineſs or work of their ordinary callings, upon the Lord's day, or any part thereof, works of neceſſity and charity only excepted"——

Sect. 3. " Provided, that nothing in this act contained ſhall extend to the prohibiting of dreſſing of meat in families, or dreſſing or ſelling of meat in inns, cooks ſhops or victualling houſes, for ſuch as otherwiſe cannot be provided"——

The court had granted a rule for the defendant, a juſtice of peace for the county of *Middleſex*, to ſhew cauſe why an information ſhould not be granted againſt him, for *refuſing to receive* an information regularly and duly laid before him againſt a *baker* for exerciſing his *trade on a Sunday*, contrary to the ſtatute of 29 *Car.* 2. *c.* 7. (" for the better obſervation of " the Lord's day;") Mr. *Cox* giving it as a reaſon for his refuſal, " That " the juſtices of *Middleſex* and of *Weſtminſter* had come to ſuch an agree- " ment amongſt themſelves, not to receive ſuch informations." They laid the ſtreſs of the caſe upon the juſtices *refuſal to receive* the information at all: though Mr. juſtice *Foſter* on the original motion, thought that there was no need to *receive* it, if the juſtice was of opinion, upon its being opened to him, " that the caſe ſtated to him was *not* an offence within " the act," And he intimated his *own* opinion, pretty ſtrongly, " that " it was *not ſo*; and that it was better that *one* baker and his men ſhould " ſtay at home, than *many* families and ſervants." He ſaid He was as much for the obſervation of the Sabbath, as any one: but he did not think a Phariſaical or a Jewiſh obſervation of it to be neceſſary. Lord *Mansfield* likewiſe at the ſame time hinted His opinion, " that the Sab- " bath would be much more generally obſerved by a baker's ſtaying at " home to bake the dinners of a number of families, than by his going " to church, and thoſe families or their ſervants ſtaying at home to dreſs " dinners for themſelves." However, they all agreed that it would be by no means amiſs, that the juſtices at *Hicks's Hall* ſhould have an opportunity of knowing the *opinion of this* court upon this ſubject: and (for that purpoſe principally, as it ſeemed to Me,) they granted a rule to ſhew cauſe. Mr. ſerjeant *Nares* and Mr. *Stowe* now ſhewed cauſe; and obſerved that the charge was not for baking *bread*, but for baking puddings, pies, and other ſuch things for *dinner*. And that the act of 29 *Car.* 2. *c.* 7. *ſ.* 3. allows of *dreſſing meat*, on a *Sunday*, for *dinner*; and excepts works of *neceſſity* and charity. And all the juſtices of peace of *Middleſex* and *Weſtminſter* have agreed, that *this* is not an offence which that ſtatute meant

Baking puddings, pies, and ſuch things on a Sunday, is not an offence meant by ſtat. 29 Car. 2. c. 7. but is within the equity of the proviſo in the 3d ſection of it, as a *cook's ſhop*; and within the exception of works of *neceſſity* and *charity*. 2 Bur Rep. 785—788. Eaſt. 32 Geo. 2. Rex v. Benjamin Cox, eſq.

meant to puniſh. And this gentleman, Mr. *Cox*, *heard* the whole complaint, and then declared the opinion of himſelf and of his brethren, "That it was *not* an offence within the meaning of the act of parliament "or any other law: for that He and the other juſtices conſidered it as a "cook's ſhop, and as a matter of *neceſſity*, and of relief to poor people."

Mr. *Norton*, Mr. *Morton*, and Mr. *Aſhurſt contra*, for the information, cited two caſes of *Rex* v. *Sergeſon*, and *Rex* v. *Dawſon*. This does not appear, they ſaid, to have been a baking for the *poor only*, or for the *poor at all*; which cannot be preſumed: ſo that it does not appear to be a work of charity or neceſſity. Nor is it to be ranked under the appellation or nature of a cook's ſhop; and conſequently not within the proviſo in the third ſection.

Lord *Mansfield*——The complaint now appears to have been founded upon a miſrepreſentation of the fact: for the affidavit charges this juſtice of peace to have refuſed *receiving* the information; and that He told them the juſtices had come to an agreement "not to grant warrants againſt perſons for *baking* on a *Sunday*." Whereas it now appears that He *did hear* the charge; and that it was *not baking in general* on a *Sunday*; but baking *pies*, *puddings* and *meat for dinner*; not ſaying a word about *bread*, which is the buſineſs of a baker's ordinary calling. And He told them, "That "this ſort of baking or *dreſſing meat* on a *Sunday* was not, in his opinion, "and in the opinion of the reſt of the juſtices, an offence within the act." I am not ſatisfied that their opinion was wrong. And if he *really* judged it not to be within the proviſion of any law, and had conſulted his brethren who thought ſo too, the court would never grant an information againſt him; even though ſuch opinion had been erroneous.

Mr. juſtice *Deniſon*——This court will never grant an information againſt a juſtice of peace for a mere error in judgment. And He declared that He thought the juſtices to be in the right in their opinion; and that this was *not* a caſe within the meaning of the law: it ſeems to be within the *equity*, tho' not within the words of the proviſo of ſect. 3. Therefore the rule ought to be diſcharged. Mr. juſtice *Foſter* concurred that the rule ought to be diſcharged. He was clear that this caſe was not within the proviſion of the act: but it falls within the exception of works of neceſſity and charity, and alſo within the proviſo, as being a cook's ſhop. And it is as reaſonable that the baker ſhould *bake* for the poor, as that a cook ſhould roaſt or boil for them: there is no reaſon for any diſtinction. And as the juſtice has acted rightly, and alſo upon right motives, the rule ought to be diſcharged *with coſts*. A juſtice of peace has a right to judge for himſelf, whether the matter charged is an offence within the law: and if upon hearing the charge opened, he thinks it *not* to be an offence within the law, he ought not to proceed upon it; which could be to no purpoſe, but merely to put perſons to unneceſſary trouble and charge. Mr. juſt. *Wilmot*——It comes out now, that the juſtice did *not* refuſe to *hear* and *receive* the complaint; though when it was opened to him, He judged that he ought not to *proceed* upon it. And in this he judged right: for it is not an offence within the proviſion of the act; it is particularly within the equity of the exception of *cooks ſhops*. Therefore I think

think the juſtice had no juriſdiction to proceed upon the complaint. I think that no juſtice of peace ought to be puniſhed by an information, for an error in judgment. But I think that the juſtice was in the *right* in the preſent caſe. And therefore that the rule ought to be diſcharged *with coſts*. *Per cur.* Rule diſcharged with coſts.

Ballaſt.

BALLAST is ſomething put at the bottom of a ſhip to keep it ſteady. *Johnſ.*

Stat. 34 & 35 *Hen.* 8. *cap.* 9. [*A. D.* 1542. *intituled*] "An act for the preſervation of the river of *Severn*." 34 & 35 Hen. 8 c. 9.

Sect. 6. "And be it alſo enacted by the authority aforeſaid, That no perſon or perſons, after the firſt day of *Auguſt* next coming, do caſt or unlade out of any manner of ſhip, crayer, or any other veſſel, being within any haven, road, channel, or river, flowing or running to any port-town, or to any city, borough, or town within this realm, or any other the king's dominions, any manner of ballaſt, rubbiſh, gravel, or any other wreck or filth, but only upon the land above the full ſea mark; (2) upon pain that every perſon and perſons offending this act, to loſe and forfeit for every time ſo offending 5 *l.* the one half to the king our ſovereign lord, and the other half thereof to ſuch perſon and perſons as will ſue for the ſame, by bill, plaint, original writ, or information, in any the king's courts of record, in which action or ſuit, no wager of law ſhall be admitted, nor any eſſoin or protection allowed." The penalty for caſting of ballaſt, rubbiſh, &c. into any channel, haven, road, or river.

Stat. 19 *Geo.* 2. *c.* 22. [*A. D.* 1746. *intituled*] "An act for the better preſervation of havens, roads, channels, and navigable rivers, within that part of *Great Britain* called *England*." 19 Geo. 2. c. 22.

"Whereas maſters and owners of, and other perſons belonging to ſhips, crayers, or other veſſels coming into havens, ports, roads, channels, or navigable rivers, within that part of *Great Britain* called *England*, do caſt, throw out, and unlade their ballaſt, either on the ſhore, or on the ſide, and below the uſual full ſea-mark, and frequently do other annoyances, to the detriment and obſtruction of navigation, and the offenders often go unpuniſhed, for want of a further and more ſpeedy method of bringing them to juſtice: For remedy whereof, may it pleaſe your majeſty, that it may be enacted; and be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if at any time, from and after the firſt day of *June* one thouſand Maſters, &c. throwing out ballaſt, &c.

thouſand ſeven hundred and forty-ſix, any maſter or owner, or any perſon acting as maſter of any ſhip, pink, crayer, lighter, keil-boat, or other veſſel whatſoever, ſhall caſt, throw out, or unlade; or if at any time, from and after the day aforeſaid, there ſhall be caſt, thrown out, or unladen from and out of any ſhip, pink, crayer, lighter, keil-boat, or other veſſel whatſoever, being or riding within any haven, port, road, channel, or navigable river, within that part of *Great Britain* called *England*, any ballaſt, rubbiſh, gravel, earth, ſtone, wreck, or filth, but only upon the land where the tide or water never flows or runs; it ſhall and may be lawful for any one or more juſtice or juſtices of the peace for the county, city, town corporate, liberty, or place, where or near which ſuch offence ſhall be committed, upon information thereof, and he and they are hereby authorized and required, to ſummon, or iſſue out his or their warrant or warrants, to apprehend and bring before him or them the maſter or maſters, owner or owners of any ſuch ſhip, pink, crayer, lighter, keil-boat, or other veſſel, or other perſon or perſons acting as ſuch, againſt whom ſuch complaint or information ſhall be made or given; and upon his, her, or their appearance or default, to proceed to examine the matter of fact, and upon due proof made (either by the confeſſion of the party offending, or on view of ſuch juſtice or juſtices, or upon the oath or oaths of one or more credible witneſs or witneſſes, which oaths the ſaid juſtices are hereby impowered and required to adminiſter) that any ballaſt, rubbiſh, earth, gravel, ſtone, wreck, or filth, had been caſt, unladen, or thrown out of, or from any ſhip, pink, crayer, lighter, keil-boat, or other veſſel, the maſter or maſters, or perſon or perſons acting as maſter or maſters thereof, ſhall be adjudged, and he and they are hereby reſpectively declared to be the offenders againſt this act; and he and they being by ſuch juſtice or juſtices (or any of the ways and means aforeſaid) thereof convicted, ſhall forfeit and pay for every ſuch offence any ſum, not exceeding the ſum of five pounds, nor under fifty ſhillings, at the diſcretion of ſuch juſtice or juſtices, the one moiety thereof to the informer, and the other moiety thereof to the overſeers of the poor of the pariſh, town, or place wherein ſuch conviction ſhall be pronounced, for the uſe of the poor there.

out of any ſhip, &c. in harbour, &c.

but upon dry land only.

Juſtices may iſſue warrants,

and upon proof, &c.

fine them not more than 5 l. nor leſs than 5 os.

Penalties how recoverable.

Sect. 2. " And be it further enacted, That the penalties inflicted or incurred by this act, ſhall be recovered and levied by diſtreſs and ſale either of the goods and chattels of the perſons ſo convicted reſpectively as aforeſaid, or of the ſhip, pink, crayer, lighter, keil-boat, or other veſſel, or of their tackle, apparel, or furniture (by warrant or warrants under the hand and ſeal, or hands and ſeals of ſuch juſtice or juſtices, and which he and they are hereby impowered and required, on ſuch conviction as aforeſaid to make, and to direct the ſame to the conſtables, or to the tythingman, or other proper officer of the pariſh, town, or place where ſuch warrants are reſpectively to be executed; and which warrants the conſtables and tythingmen, and officers aforeſaid are hereby reſpectively required to execute) together with the charges of ſuch diſtreſs and ſale, rendering the overplus (if any be, after demand in writing) to the reſpective owners thereof;

thereof; and for want of ſufficient diſtreſs, the ſaid juſtice or juſtices are hereby impowered and required to commit ſuch maſter or maſters, or perſon or perſons acting as ſuch, and ſo convicted as aforeſaid, to the common gaol of the county, city, town corporate, or to the houſe of correction of the county where the offenders ſhall be reſpectively convicted as aforeſaid, there to remain for the ſpace of two months, or until payment ſhall be made of the penalties and forfeitures, or ſo much thereof, as for the nonpayment of which ſuch commitment ſhall be. For want of diſtreſs to be committed.

Sect. 3. "And whereas it frequently happens, that ſhips and veſſels are run on ſhore, ſunk, or ſtranded in harbours, ports, channels, and navigable rivers, or are brought or drove into the ſame in a ruinous or ſhattered condition, and the owner, or ſome other perſon having, or pretending to have the command or power of ſuch ſhip or veſſel, frequently ſhip off or take away the rigging, tackle, and other valuable parts thereof, and permit the hulk to ſink in the ſand, in ſuch harbours and places as aforeſaid, and there to remain; and great damages often happen thereby, not only by other ſhips and veſſels ſticking or running thereon, but by filling up the channel in ſuch harbours and places, ſo as to render the ſame impracticable, or very difficult or dangerous for navigation, before the ſame can be removed by any of the laws now in being: Now, for the more effectually remedying ſuch miſchiefs for the future, Be it further enacted by the authority aforeſaid, that as ſoon as any ſhip or veſſel ſhall, after the ſaid firſt day of *June*, be ſunk, ſtranded, or run on ſhore in any harbour, port, channel, or navigable river, or ſhall be brought or drove in, or be there in a ruinous or ſhattered condition as aforeſaid, and permitted to remain there, and the owner, or ſome other perſon having, or pretending to have any property therein, or the command or power thereof, or any other perſon or perſons by their or any of their order, privity, or aſſent, ſhall begin to take down, or carry away any of the rigging or tackle, or if there ſhall not be any perſon to take care of the ſaid ſhip or veſſel, it ſhall be lawful for any one or more juſtice or juſtices of the peace for the county or place where or near ſuch fact, accident, or offence ſhall happen, upon information thereof, and he and they are hereby authorized and required, to ſummon, or iſſue out his or their warrant or warrants to apprehend and bring before him or them the owner, or other perſon having, or pretending to have the command or power over ſuch ſhip or veſſel; and upon his or their appearance, or default, to proceed to examine the matter of fact, in manner and form aforeſaid; and in caſe, upon ſuch examination, ſuch juſtice or juſtices ſhall find any owner, or other perſon having, or pretending to have the command or power over ſuch ſhip or veſſel, or any of the perſons aforeſaid, guilty of ſuch offence as aforeſaid, ſuch juſtice or juſtices ſhall, and he and they is and are hereby required to iſſue his and their warrant or warrants for ſeizing and removing ſuch ſhip or veſſel, and alſo the rigging or tackle thereof, in ſuch manner as ſuch juſtice or juſtices ſhall order and direct; and if the owner, or ſuch other perſon aforeſaid, ſhall not within five days give ſecurity, according to the approbation of ſuch juſtice or juſtices, to clear the harbour, port, channel, or river of ſuch veſſel, and of all wreck, and parts Ship ſunk or ſtranded, &c. in an harbour, and permitted to remain there, Juſtices to ſummon the owner, &c. and upon conviction, to iſſue warrants for ſeizing and removing the ſhip and tackle, and unleſs the owner give

ſecurity within 5 days, to make ſale of the ſame.

parts belonging to the ſame, and pay the charges and expences of ſeizing, removing, and diſpoſing of ſuch ſhip or veſſel, tackle or furniture, then to cauſe the hulk, rigging, or tackle to be ſold, and with or out of the money ariſing by ſuch ſale to pay the charges and expences of clearing the harbour or place where ſuch ſhip or veſſel ſhall lie; and alſo the charges and expences of ſeizing, removing, and ſelling ſuch ſhip, veſſel, furniture, and tackle, rendering the overplus, if any be, to the owner or owners of ſuch manor where the ſame ſhall happen."

Juſtices to execute this act indiſcriminately.

Sect. 4. "And be it further enacted by the authority aforeſaid, That all and every the juſtices aforeſaid may, and they are hereby reſpectively authorized and required to put this act in execution againſt any perſon or perſons within their ſeveral jurisdictions, although ſuch juſtice or juſtices ſhall or may be rated or aſſeſſed, or do, or ſhall, or may actually pay for or towards the maintenance or relief of the poor of any pariſh, town, or place, in which any conviction in purſuance of this act ſhall be pronounced; any law or ſtatute to the contrary thereof notwithſtanding."

Convictions to be final.

Sect. 5. "And be it alſo enacted that all convictions, to be pronounced by the authority of this act, ſhall be final to all intents and purpoſes, not to be appealed from, or removed into any court of record at *Weſtminſter*."

Diſtreſs not to be ſold till after 5 days.

Sect. 6. "Provided always, and it is hereby further enacted, That none of the diſtreſſes to be at any time made by virtue of this act, or any part of ſuch diſtreſſes, ſhall be ſold till after the expiration of five days from the day of making ſuch diſtreſſes reſpectively; but that it ſhall and may be lawful to and for the perſons convicted in the mean while (to wit, at any time before the expiration of the ſaid five days) to redeem ſuch diſtreſs, by payment of the money for which the ſame ſhall have been made by virtue hereof, to and for the uſes and purpoſes of this act, together with the coſts and charges of and for the making, ſeizing, and detaining ſuch diſtreſs.

Limitation of the powers of this act.

Sect. 7. "Provided nevertheleſs, that nothing in this act contained ſhall extend, or be conſtrued to extend, to take away, abridge, diminiſh, or alter any right, benefit, or lawful uſe, that the lord or lords, lady or ladies of any manor or manors adjoining to or bordering upon any haven, port, road, channel, or river, or that any other perſon or perſons whatſoever hath or have to ſuch haven, port, channel, or river, or to the banks, ſhores, or ſides thereof, or any fiſhery, manufactures, or royalties therein; nor extend to the caſting out, unlading, or throwing out of any ſhip, pink, crayer, lighter, keil-boat, or other veſſel, any ſtone, rocks, bricks, lime, or other materials, uſed, or to be uſed, in or towards the building, amending, repairing, and keeping in repair, any quay, pier, wharf, wear or bridge, or the banks or ſides of any haven, port, road, channel, or navigable river within this realm; but, on the contrary, this act ſhall be conſtrued and taken to prevent the miſchiefs to be done in, or to, or upon the ſaid havens, ports, roads, channels, or rivers, which may any ways tend to obſtruct, prejudice, incommode, hinder, or do any annoyance in the ſaid havens, ports, roads, channels, or rivers, or prejudice the navigation therein, and not otherwiſe.

Sect.

Sect. 8. "Provided alſo, that nothing herein contained ſhall extend to take away, abridge, diminiſh or limit any former or other juriſdiction, or right, or remedy, to puniſh any nuſance to be done or committed in any haven, port, road, channel, or navigable river.

THIS was a ſpecial verdict from *Northumberland* aſſizes, upon an action of treſpaſs for breaking and entering the plaintiff's ſhip in the river *Tyne*, at *Newcaſtle* upon *Tyne*, and taking and carrying away an anchor —: to which the defendant pleaded "Not guilty". The ſpecial verdict finds that the defendant was a juſtice of the peace of and for the town and county of *Newcaſtle* upon *Tyne*; and that the plaintiff was maſter of a ſhip called the *Leeds-Merchant*, floating, *&c.* in the river *Tyne*, being a navigable river: that 3 tons of ballaſt and more were unloaded out of the ſaid ſhip, INTO a machine or veſſel called a *hopper*, in the ſaid river *with intent* that it ſhould be carried therein, into the high and open ſeas; And that it *was accordingly carried out of the* ſaid river *into the high and open ſea*, and was *there* caſt out of the ſaid hopper, where the water was more than 14 fathom deep, at a diſtance from any port, haven, channel or navigable river. It finds that *Thomas Field*, before the time of the ſuppoſed treſpaſs, *viz.* on ſuch a day, *&c.* came before the defendant being a juſtice of peace, *&c.* and laid "information of the facts of" putting the ballaſt *into the hopper* with an *intent that it ſhould be dropped* out of the ſaid hopper INTO *the* WATER, and NOT *be caſt*, *&c.* upon the LAND *where the tide and water never flows or runs*;" *contrary* to the ſtatute. It finds that the plaintiff was ſummoned to appear, and that he did appear before the ſaid juſtice; and that proof was then and there made, by his confeſſion, "That it was ſo put *on board the hopper*, in the ſaid river, *with intent* that it ſhould be therein carried out of the ſaid river *into the high and open ſea*, and caſt *therein* at the depth of 14 fathom and upwards, at the diſtance from any haven, *&c.* (*ut ſupra*) where the tide or water never flows or runs." It is found that the defendant thereupon *convicted* the plaintiff, and adjudged him to be an offender againſt the ſtatute of 19 *G.* 2. *c.* 22. Then it finds the conviction before the juſtice, *in hæc verba*; and that the then defendant (the now plaintiff) was adjudged to forfeit 2 *l.* 10*s.* for the ſaid offence. It finds that the juſtice of peace (the now defendant) iſſued his warrant under his hand and ſeal, to levy the ſame by diſtreſs, *&c.* And that *William Bruce* a ſerjeant at mace (to whom the warrant was directed,) by virtue of the ſaid warrant, took the ſaid anchor, *&c.*

This caſe was firſt argued on *Friday* the 9th of *June* laſt, by Mr. *Winn* for the plaintiff; and Mr. ſerjeant *Pool* for the defendants. Mr. *Winn* — rehearſed the ſtatute of 19 *G.* 2. *c.* 22. *ſ.* 1, 2. And ſaid that the fact found to have been *proved*, is *no offence within* this act: And conſequently, the defendant was a treſpaſſer in levying the penalty. Nothing is found to have been proved but a *mere* INTENTION. This is a *penal* law, and muſt be conſtrued *ſtrictly*: 34, 35 *H.* 8. *c.* 9. *ſ. ult.* gives the penalty for caſting rubbiſh into havens, roads, channels, *&c.* Then 19 *G.* 2. *c.* 22. deſcribes the offence to be caſting, throwing, out, or unlading any ballaſt, rubbiſh *&c.* "BUT ONLY *upon the* LAND, where the tide or water never flows or runs." And the preamble deſcribes the miſchief to be "Caſting, throwing out, and unlading their ballaſt, either on the ſhore, or on the ſide, and *below* the uſual

Navigation may not be obſtructed by caſting rubbiſh, or unlading ballaſt, in any havens, roads, channels, &c but only upon the *land*, where the tide never flows, by Stat. 34 & 35 Hen. 8. c. 9. and 19 Geo. 2. c. 22. the unloading it into a hopper, with intent to carry it out to ſea is an offence againſt the expreſs proviſion of the latter act, which ſays "That it ſhall not be diſcharged but only upon land;" but putting it into a hopper, in order to carry it upon land, would not be ſo, nor ſhifting it out of one ſhip into another, with intention to drop it *any where*. 2 Bur. Rep. 656. Mich. 32 Geo 2. in B. R. Bucklesbank v. Smith Eſq.

uſual and full ſea-mark, and doing other annoyances, *to the detriment and obſtruction of navigation.* In the *Thames*, this method of diſpoſing of the ballaſt is never treated as an offence: And that is under the care and inſpection of the *Trinity-Houſe.* The miſchief which the legiſlature had in view, was throwing the ballaſt, *&c.* either on the ſhore, or on the *ſides of rivers*, and below the full ſea-mark. But this was in the open and high ſea, above 14 fathom deep, at a diſtance from any port, haven, channel, or river. He relied upon the *intention* and *ſpirit* of this law, rather than upon the *letter* of it: which intention of the act, he ſaid, would plainly appear from the proviſo at the end of it, (V. *ſect. penult.*) and that was intended ſolely to prevent prejudice to the navigation, in havens, ports, roads, channels or rivers, and for no other purpoſe. But nothing is ſtated here of any ſort of prejudice actually done to the navigation, or even of any ſuch intention to prejudice the navigation of the haven, port, road, channel or river. The ballaſt was carried *out of* the river, into the high and open ſea; and there caſt out, at above 14 fathom depth, and at a diſtance from any port, haven, channel, or river.— And the *intention only* is laid accordingly. And the confeſſion is of nothing more than *ſuch* an intention. But there is neither proof nor confeſſion of any *fact* whatſoever: Nor was any *actual* injury done.

Mr. ſerjeant *Pool contra*, for the defendant —It was impoſſible for us, in the nature of the thing, to *prove* "That the ballaſt was ACTUALLY dropped in the river:" For this is done privately from the bottom of the hopper. It was neceſſary therefore for us to charge the *intent* as the offence. And this intent the defendant has *confeſſed.* And the *offence*, as we have charged it, is within the act; *viz.* "Putting the ballaſt into the hopper, with intent, *&c.* This is a *poſitive law*, "That no perſon ſhall caſt, throw out, or diſcharge out of, *&c.* any ballaſt, *&c.* BUT ONLY *upon the land*," where the tide or water *never flows or runs.*" To which poſitive law the fact charged is *directly contrary.* The preſent act of 19 *G.* 2. was made to inforce and make more eaſy the proſecuting offences againſt the former ſtatute of 34, 35 *H.* 8. upon which it was difficult to proſecute the offender, in ſome caſes. And here are proper exceptions, upon proper occaſions: In all other reſpects it is a general law. It is ſaid indeed, on the part of the plaintiff, "That here is no actual prejudice done to the navigation." But what the plaintiff has done, *may*, by ſome means or other prejudice the navigation of the river: It is in their power to drop the ballaſt out of this hopper, in the *channel* of the river, without any poſſibility of being diſcovered. And this ſtatute is in negative words, *viz.* BUT ONLY upon the *land.*" *Co. Lit.* 115. affirms that there is a diverſity between an act of parliament in the negative, and one in the affirmative; and ſhews ſuch diverſity. Therefore he prayed judgment for the defendant.

Mr. *Winn*, in reply — This act ought to be conſtrued *ſtrictly*; as it is a reſtraint of a common-law right which a man has to lay his ballaſt where he pleaſes; provided he be not guilty of a nuſance, in ſo doing. And this is no offence againſt the *ſpirit* and *intention* of this law. Nothing is charged, but an *intent.* Which intent was not, even if it had been *executed*, a *ſubſtantial* offence againſt this law. Lord MANSFIELD — This is a *genera*

queſtio *l*

queſtion, which goes further than this particular caſe. Mr. juſtice *Foſter* aſked if the corporation of *Newcaſtle* were not conſervators of the river *Tyne*. It was anſwered "That they were." Mr. juſtice *Foſter*—Corporations ought to be protected in their juſt and ancient rights. The court did not upon this firſt argument, give any opinion: but it was ordered to ſtand for a further argument. ULTERIUS CONCILIUM. And now, Mr. *Clayton* argued on behalf of the plaintiff, as before, "That this fact was found *not* an offence within the act." Mr. *Norton* was going to anſwer him on the part of the defendant. But

Lord *Mansfield* ſtopped him, from entering into it at all; it being a very plain caſe, and clearly againſt the *expreſs* prohibition of the act: which provides that it ſhall *not* be thrown BUT *upon the land*. Whereas this man ſays that he has found a better way, than that which the act has *expreſsly* preſcribed. But here is ſuch an opening to fraud, in this way that he has thought a better one, that it would be dangerous to truſt to this method, though it were not prohibited. However, it is enough, that it is contrary to the *direct* and *expreſs* proviſion of the act. Indeed if it was put upon the hopper, *in order merely to carry it upon the* LAND; that would only be the proper means of doing it, and therefore would not be an offence againſt the act. But this is with intent to lay it in the WATER. And there can be no ſecurity as to the *place where* the hopper may *drop it*. It is mighty eaſy, from the conſtruction of the hopper, to drop it privately: and it is alſo the intereſt of the perſon who carries in the hopper, to drop it as ſoon as he can; that he may come the ſooner again, to fetch more. The ſhifting it out of one ſhip into another, WITHOUT *intention to drop it* ANY *where*, would not be a caſe within the act: for that would not be a *caſting or throwing out* at all, *within* the meaning of the act. The *other three judges* agreed, in terms, with lord *Mansfield*; and all of them ſpoke explicitly to the ſame effect. *Per cur.* unanimouſly, judgment for the defendant.

For regulating ballaſtage and laſtage in the river Thames, *ſee* 6 Geo. 2. c. 29. 11 Geo. 2. c. 12. 18 Geo. 2. c. 21. 32 Geo. 2. c. 16.

See **Rivers**.

Bankrupt.

BANKRUPT is a trader, who ſecrets himſelf, or does certain other acts, tending to defraud his creditors. 2 *Black. Com.* 285. The word itſelf is derived from the word *bancus* or *banque*, which ſignifies the table or counter of a tradeſman (1 *Du Freſne* 969.) and *ruptus*, broken; denoting thereby one whoſe ſhop or place of trade is broken and gone; though others rather chooſe to adopt the word *route*, which in *French* ſignifies a *trace* or *track*, and tell us that a bankrupt is one who hath removed

moved his banque, leaving but a trace behind. (4 *Inſt.* 277.) And it is obſervable that the title of the firſt *Engliſh* ſtatute concerning this offence, *viz.* 34 *Hen.* 8. *c.* 4. " againſt ſuch perſons as do make bankrupt," is a literal tranſlation of the *French* idiom, *qui font banque route.* 2 *Black. Com.* 472. *Cowell.*

The granting commiſſions of bankruptcy ſeems to be derived from the civil law, which conſtituted a guardian to a prodigal in the ſame manner as to a madman; and ſuch guardian the pretor appointed on the petition or application of relations as well as creditors; but the feudal law, though it admitted of commiſſions of lunacy *ex neceſſitate*, would allow of none for prodigality, which was not reckoned injurious; becauſe ſuch prodigal could not alien his lands without leave of the lord; and the condition of a freeman was not to be altered without the crime of felony: but as trade and commerce increaſed, it was found neceſſary for the ſupport of credit, to introduce ſuch a law amongſt us, and therefore our acts of parliament have confined it to traders and creditors only. 1 *Bac. Abr.* 246. *Lege duodecim tabularum prodigo interdicitur bonorum ſuorum adminiſtratio; quod moribus quidem ab initio introductum eſt. Sed ſolent hodie prætores, vel præſides, ſi talem hominem invenerint, qui neque tempus neque finem expenſarum habet, ſed bona ſua dilacerando et diſſipando profudit, curatorem ei dare, exemplo furioſi: Et tamdiu erunt ambo in curatione, quamdiu vel furioſus ſanitatem, vel ille ſanos mores receperit; quod ſi evenerit, ipſo jure* [*id eſt, quando certum eſt, eos neque furere amplius, neque prodigos eſſe*] *deſinunt eſſe in poteſtatem curatorum.* Dig. lib. 27. tit. 10.

A bankrupt was formerly conſidered merely in the light of a criminal or offender; (ſtat. 1 *Jac.* 1. *c.* 15. *ſect.* 17.) and in this ſpirit we are told by Sir *Ed. Coke*, (4 *Inſt.* 277.) that we have fetched as well the name, as the wickedneſs, of bankrupts from foreign nations. But at preſent the laws of bankruptcy are conſidered as laws calculated for the benefit of trade, and founded on the principles of humanity as well as juſtice; and to that end they confer ſome privileges, not only on the creditors, but alſo on the bankrupt or debtor himſelf: on the creditors; by compelling the bankrupt to give up all his effects to their uſe, without any fraudulent concealment: On the debtor; by exempting him from the rigour of the general law, whereby his perſon might be confined at the diſcretion of his creditor, though in reality he has nothing to ſatisfy the debt; whereas the law of bankrupts, taking into conſideration the ſudden and unavoidable accidents to which men in trade are liable, has given them the liberty of their perſons, and ſome pecuniary emoluments, upon condition they ſurrender up their whole eſtate to be divided among their creditors. 2 *Black. Com.* 472.

In this reſpect our legiſlature ſeems to have attended to the example of the *Roman* law. I mean not, ſays Mr. *Blackſtone*, the terrible law of the twelve tables; whereby the creditors might cut the debtor's body into pieces, and each of them take his proportionable ſhare: if indeed that law, *de debitore in partes ſecando*, is to be underſtood in ſo very butcherly a light; which many learned men have with reaſon doubted. Nor do I mean thoſe leſs

leſs inhuman laws (if they may be called ſo, as *their* meaning is indiſputably certain) of impriſoning the debtor's perſon in chains; ſubjecting him to ſtripes and hard labour, at the mercy of his rigid creditor; and ſometimes ſelling him, his wife, and children, to perpetual foreign ſlavery *trans Tiberim*; an oppreſſion, which produced ſo many popular inſurrections, and ſucceſſions to the *mons ſacer*. But I mean the law of *ceſſion*, introduced by the Chriſtian emperors; whereby if a debtor ceded, or yielded up, all his fortune to his creditors, he was ſecured from being dragged to a gaol, "*omni quoque corporali cruciatu ſemoto.*" For, as the emperor juſtly obſerves, *inhumanum erat ſpoliatum fortunis ſuis in ſolidum damnare.*" Thus far was juſt and reaſonable: but, as the departing from one extreme is apt to produce its oppoſite, we find it afterwards enacted, that if the debtor by any unforeſeen accident was reduced to low circumſtances, and would ſwear that he had not ſufficient left to pay his debts, he ſhould be compelled to cede or give up even that which he had in his poſſeſſion: a law, which under a falſe notion of humanity, ſeems to be fertile of perjury, injuſtice, and abſurdity. 2 *Black. Com.* 473.

The laws of *England*, more wiſely, have ſteered in the middle between both extremes: providing at once againſt the inhumanity of the creditor, who is not ſuffered to confine an honeſt bankrupt after his effects are delivered up; and at the ſame time taking care that all his juſt debts ſhall be paid, ſo far as the effects will extend. But ſtill they are cautious of encouraging prodigality and extravagance by this indulgence to debtors; and therefore they allow the benefit of the laws of bankruptcy to none but actual *traders*; ſince that ſet of men are, generally ſpeaking, the only perſons liable to accidental loſſes, and to an inability of paying their debts, without any fault of their own. If perſons in other ſituations of life, run in debt without the power of payment, they muſt take the conſequences of their own indiſcretion, even though they meet, with ſudden accidents that may reduce their fortunes: for the law holds it to be an unjuſtifiable practice, for any perſon but a trader to incumber himſelf with debts of any conſiderable value. If a gentleman, or one in a liberal profeſſion, at the time of contracting his debts, has a ſufficient fund to pay them, the delay of payment is a ſpecies of diſhoneſty, and a temporary injuſtice to his creditor: and if, at ſuch time, he has no ſufficient fund, the diſhoneſty and injuſtice is the greater. He cannot therefore murmur, if he ſuffers the puniſhment which he has voluntarily drawn upon himſelf: but in mercantile tranſactions the caſe is far otherwiſe. Trade cannot be carried on without mutual credit on both ſides; the contracting of debts is therefore here not only juſtifiable, but neceſſary. And if by accidental calamities, as by the loſs of a ſhip in a tempeſt, the failure of brother traders, or by the non-payment of perſons out of trade, a merchant or trader becomes incapable of diſcharging his own debts, it is his misfortune and not his fault. To the misfortune therefore of debtors, the law has given a moſt compaſſionate remedy, but denied it to their faults; ſince, at the ſame time that it provides for the ſecurity of commerce, by enacting that every conſiderable trader may be declared a bankrupt for the benefit of his creditors as well

as himſelf, it has alſo to diſcourage extravagance declared, that no one ſhall be capable of being made a bankrupt, but a *trader*, nor capable of receiving the full benefit of the ſtatutes, but only an *induſtrious* trader. 2 *Black. Comment.* 473, 474.

The firſt ſtatute made concerning any *Engliſh* bankrupts was 34 *Hen.* 8. *c.* 4. when trade began firſt to be properly cultivated in *England*; which has been almoſt totally altered by ſtatute 13 *El. c.* 7. 2 *Black. Com.* 474.

34 & 35. Hen. 8. c. 4. **Stat.** 34 & 35 *Hen.* 8. *c.* 4. [*A. D.* 1542. *intituled*] "An act againſt ſuch perſons as do make bankrupt."

"Where divers and ſundry perſons, craftily obtaining into their hands great ſubſtance of other mens goods do ſuddenly flee to parts unknown, or keep their houſes, not minding to pay or reſtore to any their creditors, their debts and duties, but at their own wills and pleaſures conſume the ſubſtance obtained by credit of other men, for their own pleaſure and delicate living, againſt all reaſon, equity and good conſcience: Be it therefore enacted by authority of this preſent parliament, That the lord chancellor of *England*, or keeper of the great ſeal, the lord treaſurer, the lord preſident, lord privy ſeal, and other of the king's moſt honourable privy council, the chief juſtices of either bench for the time being, or three of them at the leaſt, whereof the lord chancellor or keeper of the great ſeal, lord treaſurer, lord preſident, or the lord privy ſeal, to be one, upon every complaint made to them in writing by any parties grieved concerning the premiſſes, ſhall have power and authority, by virtue of this act, to take by their wiſdoms and diſcretions, ſuch orders and directions, as well with the bodies of ſuch offenders aforeſaid, whereſoever they may be had, or otherwiſe, as alſo with their lands, tenements, fees, annuities, and offices, which they have in fee-ſimple, fee-tail, term of life, term of years, or in the right of their wives, as much as the intereſt, right and title of the ſame offender ſhall extend or be, and may then lawfully be departed with, by the ſaid offender, and alſo with their money, goods, chattels, wares, merchandizes, and debts, whereſoever they may be found or known. And to cauſe their ſaid lands, tenements, fees, annuities, offices, goods, chattels, wares, merchandizes and debts to be ſearched, viewed, rented, and appraiſed, and to make ſale of the ſaid lands, tenements, fees, annuities and offices, as much as the ſame offender may then lawfully give, grant or depart with, or otherwiſe to order the ſame for true ſatisfaction and payment of the ſaid creditors: that is to ſay, to every of the ſaid creditors, a portion rate and rate like, according to the quantity of their debts. And that every direction, order, bargain, ſale, and other things done by the ſaid lords authorized, as is aforeſaid, in writing ſigned with their hands, by authority of this act, ſhall be good and effectual in the law to all intents conſtructions and purpoſes againſt the ſaid offenders, their heirs and executors for ever, as though the ſame order, direction bargain and ſale had been made by the ſaid offender or offenders, at his or their

Complaints.

Order.

Sale.

own

own free-will and liberty, by writing indented inrolled in any the king's courts of record.

Sect. 2. " And be it alſo further enacted by the authority aforeſaid, That if after any ſuch act or offence committed, and complaint thereof made to the ſaid lords as is aforeſaid, any party grieved concerning the premiſſes, knowing, ſuppoſing, or ſuſpecting any of the goods, chattels, wares, merchandiſes or debts of ſuch offender or offenders, to be in cuſtody, uſe, occupying, keeping, or poſſeſſion of any perſon or perſons, or any perſon or perſons to be indebted to any ſuch offender or offenders, do make relation thereof to the ſaid lords, to whom authority is given by this preſent act, as is aforeſaid: that then the ſaid lords ſhall by virtue hereof have full power and authority to ſend for and convent afore them by ſuch proceſs, ways or means, as they ſhall think convenient by their diſcretions, all and every ſuch perſon and perſons ſo known, ſuppoſed or ſuſpected, to have any ſuch goods chattels, wares, merchandiſes, or debts in his or their cuſtody, uſe, occupation, keeping or poſſeſſion, or ſuppoſed or ſuſpected, to be indebted to ſuch offender or offenders: and upon their appearance to examine them and every of them as well by their oaths, as otherwiſe by ſuch ways and means, as the ſaid lords by their diſcretions ſhall think meet and convenient, for and upon the ſpecialty, certainty, true declaration and knowledge, of all and ſingular ſuch goods, chattels, wares, merchandiſes, and debts of any ſuch offenders as be ſuppoſed or ſuſpected to be in his or their cuſtody, uſe, occupation or poſſeſſion, and of all ſuch debts, as by them or any of them ſhall be ſuppoſed or ſuſpected to be owing to any ſuch offender; and if any ſuch perſon or perſons upon ſuch examination do not diſcloſe, plainly declare and ſhew the whole truth of ſuch things as he or they ſhall be examined of concerning the premiſſes: then every ſuch perſon or perſons ſo examined, and not declaring the plain and whole truth concerning the premiſſes, upon due proof thereof to be made before the ſaid lords therefore authoriſed, as is aforeſaid, by witneſs, examination, or otherwiſe, as to the ſame lords ſhall ſeem ſufficient in that behalf, ſhall loſe and forfeit double the value of all ſuch goods, chattels, wares, merchandizes, and debts by them or any of them ſo concealed and not wholly and plainly declared and ſhewed; which forfeiture ſhall be levied and recovered by the ſaid lords having authority as is aforeſaid, by ſuch ways and means as to them ſhall ſeem requiſite and convenient. And the ſame forfeiture to be diſtributed and imployed to and for the ſatisfaction and payment of the debts of the ſaid creditor or creditors, in ſuch like manner, rate and form as is above declared, concerning the ordering of the goods and chattels of the ſaid offenders, keeping their houſes, or flying to places unknown, as is aforeſaid.

Proceſs. Examination. Concealment. Forfeit.

Sect. 3. " And be it alſo further enacted by the authority aforeſaid, That if, after any ſuch perſon or perſons ſhall keep his or their houſes, or flee to parts unknown, as is aforeſaid, any perſon or perſons do fraudulently by covin or colluſion claim or demand any debt, duty, or other thing by writing or otherwiſe, of any ſuch offender or offenders, or other than ſuch as he or they can and do prove to be due by right, and conſcience in form

Claim.

aforesaid, before the said lords having authority by this present act, as is aforesaid, and the same to proceed *bona fide*, without fraud or covin: That then every such person and persons, so craftily demanding or claiming any such debt, duty or other thing, as is aforesaid, shall forfeit and lose double as much as he or they shall so claim or demand, and the same forfeiture to be levied, recovered and imployed, in manner and form as is afore rehearsed.

Collusions. *Sect.* 4. "And be it also further enacted, by the authority aforesaid, That if any such person or persons, which shall keep his or their houses, or flee to parts unknown, as is aforesaid, or intent to delay or defraud their creditors deceitfully by covin or collusion, suffer or cause any other person or persons, to recover against him or them any debts, goods, chattels, wares, or merchandizes, without just cause and title so to do, proceeding *bona fide*, without fraud or covin, that then upon complaint thereof made to the said lords having authority by this present act, as is aforesaid, the same lords, shall have power and authority by virtue hereof to convent and call before them the said recoverer or recoverers, and after such fraud, deceit, covin or collusion, shall plainly appear, or be duely proved before the said lords authorised, as is aforesaid, all the said goods and chattels of the said offender so recovered, shall be chargeable, imployed, ordered and delivered toward the payment of the true and due debts of the said creditor, after the manner, form and rate, as is afore specified, by the discretion of the said lords, having authority by this present act, the aforesaid false and fained recoveries notwithstanding; so that always such false and fained recoveries shall not be in force, or any execution thereby had of or upon any goods chattels, lands, or tenements, of any such offender or offenders, until such time as all his or their true and due debts and duties shall be fully satisfied, contented and payed to his or their creditors. And nevertheless, after that the said true debts and duties shall be fully satisfied and payed, as is aforesaid, as well the body of the said offender, as his land, tenements, goods and chattels, shall be charged and liable to the execution of the said recovery according to the tenor, force, and effect of the same.

Execution.

Sect. 5. "And be it also enacted by the same authority, That if any such person or persons which shall be indebted, do withdraw himself out of this realm, and other the king's dominions, into any foreign realm, or country, to the intent thereby to abide and remain, in defraud of his creditors: that then upon complaint in writing concerning the premisses thereof made to the said lords having authority, as is aforesaid, the same lords shall by virtue and authority of this present act, have full power and authority to award proclamations to be made in such places as to them shall be thought meet and convenient, commanding by the same such offender, in the king our sovereign lord's name, to return with all convenient speed into this realm, and to yield his body before the said lords, having authority as is aforesaid, or one of them. And if the said person, within three months next after he shall have knowledge of such proclamation, or as soon after as he conveniently may, do not repair and yield his body as is aforesaid, that then the body of all and every such offender and offenders shall be judged taken

Complaint.

Proclamation.

taken and deemed to all intents and purpoſes out of the king's protection, and that alſo all goods, chattels, lands, tenements, and debts of every ſuch offender ſhall be, by the order and diſcretion of the ſaid lords employed and diſtributed amongſt his creditors equally and indifferently rate for rate, in like manner and form as is afore declared. And that alſo every perſon or perſons, that ſhall willingly help to aid, imbezil or convey any ſuch perſon or perſons, their ſaid goods, chattels, wares, or merchandizes out of this realm, and other the king's dominions, into any foreign realm or place, knowing the ſaid perſon or perſons to depart or withdraw themſelves, or convey their ſaid goods, chattels, wares, and merchandizes for the cauſe and intent aforeſaid, ſhall ſuffer ſuch pains by impriſonment of their bodies, or pay ſuch fine to our ſovereign lord the king, his heirs or ſucceſſors, as to the ſaid lords, having authority by virtue of this preſent act, ſhall ſeem meet and convenient for their ſaid offence or offences.

Sect. 6. "Provided always, and be it enacted by the authority aforeſaid, That if the creditors of any ſuch offender or offenders, which ſhall keep his or their houſe or houſes, or which ſhall abſent or withdraw themſelves into places unknown, for the cauſe aforeſaid, be not fully ſatisfied and paid or otherwiſe contented for their debts and duties, by the ways and means afore ſpecified and declared, that then the ſaid creditor and creditors, and every of them, ſhall and may have their remedy for the recovery and levying of the reſidue of the ſame debts or duties, whereof they ſhall not be fully ſatisfied and paid, or otherwiſe contented in form aforeſaid, againſt the ſaid offender or offenders in like manner and form as they ſhould or might have had, before the making of this act; and that the ſaid creditor, and creditors, and every of them, ſhall be only barred and excluded by virtue of this act, of and for all and every ſuch part and portion of the ſaid debts and duties, as ſhall be paid, ſatisfied, diſtributed, or delivered unto him or them by the ſaid lords, having authority as is aforeſaid, and of no more portion or parcel thereof; any thing herein ſpecified that may be taken or conſtrued to the contrary notwithſtanding. Creditors.

Stat. 13 *Eliz. c.* 7. [*A. D.* 1570. *intituled*] "An act touching orders for bankrupts." 13 El. c. 7.

"Foraſmuch as notwithſtanding the ſtatute made againſt bankrupts in the thirty-fourth year of the reign of our late ſovereign lord king *Henry* the eighth, thoſe kind of perſons have and do ſtill increaſe into great and exceſſive numbers, and are like more to do, if ſome better proviſion be not made for the repreſſion of them, and for a plain declaration to be made and ſet forth, who is and ought to be taken and deemed for a bankrupt: (2) Therefore be it enacted and eſtabliſhed by the authority of this preſent parliament, That if any merchant or other perſon, uſing or exerciſing the trade of merchandize, by way of bargaining, exchange, rechange, bartry, cheviſance, or otherwiſe, in groſs or by retail; (3) or ſeeking his or her trade of living, by buying and ſelling; (4) and being ſubject-born of this realm, or of any the queen's dominions, Who is a bankrupt, how and by whom his body, lands, and goods ſhall be ordered for payment of the creditors. 34 & 35 H. 8. c. 4. 4 Inſt. 277. Cro. El. 13.

1 Bulſtr. 134. Who ſhall be ſaid a bankrupt.

minions, or denizen; (5) ſithence the firſt day of this preſent parliament, hath, or at any time hereafter ſhall depart the realm; (6) or begin to keep his or her houſe or houſes, or otherwiſe to abſent him or her ſelf; (7) or take ſanctuary; (8) or ſuffer him or her ſelf willingly to be arreſted for any debt or other thing, not grown or due for money delivered, ware ſold, or any other juſt or lawful cauſe, or good conſideration or purpoſes, (9) hath or will ſuffer him or her ſelf to be outlawed, or yield him or herſelf to priſon, or depart from his or her dwelling-houſe or houſes, (10) to the intent or purpoſe to defraud or hinder any of his or her creditors, being alſo a ſubject-born, as is aforeſaid, of the juſt debt or duty of ſuch creditor or creditors, ſhall be reputed, deemed and taken for a bankrupt."

The lord chancellor may grant a commiſſion to take order for bankrupts bodies, lands and goods. The authority of the commiſſioners. 2 Bulſtr. 26, 236, &c.

Sect. 2. "And be it enacted by the authority aforeſaid, That the lord chancellor of *England*, or lord keeper of the great ſeal of *England*, for the time being, upon every complaint made to him in writing, againſt ſuch perſon or perſons being bankrupt, as is before defined, ſhall have full power and authority by commiſſion under the great ſeal of *England*, to name, aſſign and appoint ſuch wiſe and honeſt diſcreet perſons as to him ſhall ſeem good: (2) Who, or the moſt part of them by virtue of this act and of this commiſſion, ſhall have full power and authority to take by their diſcretions ſuch order and direction with the body and bodies of ſuch perſon whereſoever he or ſhe may be had, either in his or her houſe or houſes, ſanctuary or elſewhere, as well by impriſonment of his or her body or bodies; (3) as alſo with all his or her lands, tenements, hereditaments, as well copy or cuſtomaryhold, as freehold, which he or ſhe ſhall have in his or her own right before he or ſhe became bankrupt; (4) and alſo with all ſuch lands, tenements, and hereditaments as ſuch perſon ſhall have purchaſed, or obtained for money, or other recompence, jointly with his wife, children or child, to the only uſe of ſuch offender or offenders; (5) or of, or for ſuch uſe, intereſt, right or title as ſuch offender or offenders then ſhall have in the ſame, which he or ſhe may lawfully depart withal; (6) or with any perſon or perſons of truſt to any ſecret uſe of ſuch offender or offenders; (7) and alſo with his or her money, goods, chattels, wares, merchandizes and debts whereſoever they may be found or known; (8) and cauſe the ſaid lands, tenements, fees, annuities, offices, goods, chattels, wares, merchandizes and debts to be ſearched, viewed, rented and appraiſed to the beſt value they may; (9) and by deed indented, inrolled in one of the queen's majeſty's courts of record, to make ſale of the ſaid lands, tenements and hereditaments, and of all deeds, writings and evidences touching only the ſame, belonging to ſuch offeuder or offenders, debtor or debtors; and alſo of all fees, annuities, offices, goods and chattels; (10) or otherwiſe to order the ſame for true ſatisfaction, and payment of the ſaid creditors; that is to ſay, To every of the ſaid creditors a portion rate-like, according to the quantity of his or their debts: (11) And that every direction, order, bargain, ſale and other thing done by the ſaid perſons ſo authorized, as is aforeſaid, ſhall be good and effectual in the law, to all intents, conſtructions

The commiſſioners may ſell bankrupts lands, goods, &c. March 36.

ſtructions and purpoſes, againſt the ſaid offender or offenders, debtor or debtors, his or their wife or wives, heir or heirs, child and children, and ſuch perſon and perſons as by ſuch joint purchaſe with the ſaid offender or offenders, as is aforeſaid, have or ſhall have any eſtate or intereſt in the premiſſes; (12) and againſt all other perſon or perſons claiming by, from, or under ſuch offender or offenders, debtor or debtors, by any act or acts had, made or done after any ſuch perſon ſhall become bankrupt, as is aforeſaid; (13) and alſo againſt the lords of the manors, whereof the ſaid copyhold or cuſtomary lands been holden, their heirs, ſucceſſors, and aſſigns, and every of them.

Againſt what perſons the commiſſioners ſale of a bankrupt's lands, goods, &c. ſhall be available. 2 Co. 25. Cro. Car. 149. Hob. 287.

Sect. 3. "Provided always, and be it enacted by the authority aforeſaid, That all and every perſon or perſons, to whom any ſuch ſale of copyhold or cuſtomary lands or tenements ſhall be made, ſhall, before ſuch time as they or any of them ſhall enter or take any profit of the ſame lands or tenements, agree and compound with the lords of the manors of whom the ſame ſhall be holden, for ſuch fine or incomes as heretofore hath been moſt uſual and accuſtomed to be yielded or paid therefore: (2) and that upon every ſuch agreement or compoſition, the ſaid lords for the time being, at the next court to be holden at or for the ſaid manors, ſhall not only grant unto the ſaid *Vendee* or *Vendees*, upon requeſt, the ſame copy or cuſtomary lands or tenements by copy of court-roll of the ſame manors for ſuch eſtate or intereſt as to them ſhall be ſo ſold, and reſerving the ancient rents, cuſtoms and ſervices; but alſo in the ſame court admit them tenants of the ſame copy or cuſtomary lands, as other copyholders of the ſame manors have been wont to be admitted, and to receive their fealty accordingly."

Vendees of copyhold lands ſhall compound with the lord of the manor for their fines.

Sect. 4. "Provided always, and be it enacted by the authority aforeſaid, That ſuch of the ſaid commiſſioners as ſhall put the ſaid commiſſion in execution, ſhall, upon lawful requeſt to them made by the ſaid bankrupts, not only make a true declaration to the ſame bankrupt, of the employing and beſtowing of their ſaid lands, tenements, offices, fees, goods, chattels and debts ſo paid and ſatisfied to their ſaid creditors, but alſo make payment of the overplus of the ſame, if any ſuch ſhall be, to the ſaid bankrupts, their executors, adminiſtrators or aſſigns."

The commiſſioners ſhall declare to the bankrupt how they have beſtowed his lands and goods.

Sect. 5. "And be it further enacted by authority aforeſaid, That if after any ſuch act or offence committed, and complaint thereof made to the ſaid commiſſioners ſo to be appointed, as is aforeſaid, or the more part of them, by any party grieved, as is aforeſaid, concerning the premiſſes, knowing, ſuppoſing, or ſuſpecting any of the goods, chattels, wares, merchandiſes, or debts of ſuch offender or offenders, debtor or debtors, to be in the cuſtody, uſe, occupying, keeping or poſſeſſion of any perſon or perſons; or any perſon or perſons to be indebted to any ſuch offender or offenders, do make relation thereof to the ſaid commiſſioners ſo to be appointed, or the more part of them; that then the ſaid commiſſioners, or the moſt part of them, ſhall, by virtue hereof and of the ſaid commiſſion, have full power and authority to ſend for, and call before them by ſuch proceſs, ways or means as they ſhall think convenient

The remedy where goods or debts of bankrupts be in the hands of others.

venient by their diſcretions, all and every ſuch perſon and perſons ſo known, ſuſpected, or ſuppoſed to have any ſuch goods, chattels, wares, merchandizes, or debts in his or their cuſtody, uſe, occupation, keeping or poſſeſſion, or ſuppoſed, or ſuſpected to be indebted to ſuch offender or offenders; (2) and upon their appearance, to examine them and every of them, as well by their oaths as otherwiſe, by ſuch ways and means as the ſaid commiſſioners, or the more part of them by their diſcretions ſhall think meet and convenient, for and upon the ſpecialty, certainty, true declaration and knowledge of all and ſingular ſuch goods, chattels, wares, merchandizes, and debts of any ſuch offender or offenders, as be ſuppoſed or ſuſpected to be in his or their cuſtody, uſe, occupation or poſſeſſion, and all ſuch debts as by them *or any* of *them* ſhall be ſuppoſed or ſuſpected to be owing to any ſuch offender or offenders.

The penalty of ſuch as be examined, that will not diſcloſe the truth, or refuſe to ſwear.

Sect. 6. "And if any ſuch perſon or perſons, upon ſuch examination, do not diſcloſe and plainly declare, and ſhew the whole truth of ſuch things as he or they ſhall be examined of concerning the premiſſes to his knowledge, or do deny to ſwear, then every ſuch perſon or perſons ſo denying to ſwear, or being examined, do not declare the plain and whole truth concerning the premiſſes, upon due proof thereof to be made before the ſaid commiſſioners, or the more part of them ſo to be appointed, as is aforeſaid, by witneſs, examination, or otherwiſe, as to the ſaid commiſſioners, or the more part of them ſhall ſeem ſufficient in that behalf, ſhall loſe and forfeit double the value of all ſuch goods, chattels, wares, merchandizes and debts, by them or any of them ſo concealed, and not wholly and plainly declared and ſhewed: (2) which forfeiture ſhall be levied by the ſaid commiſſioners, or the more part of them, of the lands, tenements, hereditaments, goods and chattels of ſuch perſon ſo denying to ſwear, or not diſcloſing the whole truth as is aforeſaid, by ſuch ways and means, and in ſuch manner and form, as is before limited and appointed for the principal offender or offenders, debtor or debtors; (3) and the ſame forfeiture or forfeitures to be diſtributed or employed to and for the ſatisfaction and payment of the debts of the ſaid creditor or creditors, in ſuch-like manner, rate and form as is before declared concerning the ordering of the lands and tenements, offices, fees, goods and chattels of ſuch offender or offenders, debtor or debtors, as is aforeſaid.

Farther proviſion relating hereto. 1 Jac. 1. c. 15. ſ. 10.

How the forfeiture ſhall be recovered and employed.

A remedy againſt them who do detain the goods of bankrupts.

Sect. 7. "And be it further enacted, That if at any time, before or after that any ſuch perſon or perſons departeth the realm, or ſhall keep his or their houſe or houſes, or otherwiſe abſent him or themſelves, or take ſanctuary, or ſuffer him or themſelves to be arreſted, outlawed, or yield his or their bodies to priſon, as is aforeſaid, any perſon or perſons do fraudulently by covin or colluſion, claim, demand, recover, poſſeſs, or detain any debts, duties, goods, chattels, lands or tenements, by writing, truſt or otherwiſe, which were or ſhall be due, belonging or appertaining to any ſuch offender or offenders, other than ſuch as he or they can and do prove to be due by right and conſcience, in form aforeſaid, for money paid, wares delivered, or other juſt conſideration or cauſe reaſonable, to the juſt value thereof, before the ſaid commiſſioners ſo to be appointed, or the

more part of them, as is aforeſaid, and the ſame to proceed (*bona fide*) without fraud or covin: that then every ſuch perſon or perſons ſo craftily demanding, claiming, having, poſſeſſing or detaining any ſuch debt, duty, or other thing, as is aforeſaid, ſhall forfeit and loſe double as much as he or they ſhall ſo claim, demand, detain or poſſeſs; which ſaid forfeiture ſhall be levied, recovered and employed in manner and form as is afore rehearſed.

How the forfeitures ſhall be beſtowed after the bankrupts debts be paid.

Sect. 8. "Provided alſo, and be it enacted by the authority aforeſaid, That if it ſhall fortune the creditors of any ſuch bankrupt, as is aforeſaid, to be ſatisfied and paid off their debts and duties of or with the proper lands, tenements, goods, chattels and debts of the ſaid bankrupts, or of or with the ſame, and ſome part of the forfeitures of the ſaid double values to be forfeited, as is aforeſaid, and that there ſhall remain an overplus of the ſaid forfeitures of the ſaid double values, that then the one moiety of the ſaid overplus of the ſaid forfeitures of the double values ſo remaining, ſhall be by the ſaid commiſſioners ſo executing the ſaid commiſſion, within convenient time after the levying thereof, paid unto the queen's majeſty, her heirs and ſucceſſors; and the other moiety thereof ſhall be, by the ſaid commiſſioners, employed and diſtributed to and amongſt the poor within the hoſpitals in every city, town or county where any ſuch bankrupt ſhall happen to be; any thing in this act to the contrary thereof notwithſtanding.

A remedy againſt him who withdraweth himſelf from his dwelling place.

Sect. 9. "And be it further enacted by authortity aforeſaid, That if any ſuch perſon or perſons which is or ſhall be indebted, do of purpoſe withdraw him or themſelves out of or from his or their uſual manſion-houſe or houſes, that then upon complaint thereof made to the ſaid commiſſioners having authority, as is aforeſaid, the ſame commiſſioners, or the more part of them, ſhall, by virtue and authority of this preſent act, have full power and authority to award five proclamations to be made in the queen's name upon five ſundry market-days, in ſuch places near the place where ſuch bankrupt hath moſt commonly dwelled or made his abode, commanding him or them, by the ſame proclamation in the queen's name, to return with all convenient ſpeed, and to yield his or their body before the ſaid commiſſioners, having authority, as is aforeſaid, or one of them, at ſuch time and place as by the ſaid proclamation ſhall be appointed: (2) and if the ſaid perſon do not according to ſuch proclamation, repair and yield his or their body, as is aforeſaid, that then the body of all and every ſuch offender or offenders ſhall be adjudged, taken and deemed, to all intents and purpoſes, out of the queen's protection: (3) and that alſo every perſon and perſons, that ſhall willingly and wittingly help to hide or convey, or ſhall willingly and wittingly receive, detain or keep ſecretly, any perſon or perſons ſo demanded by proclamation, as is aforeſaid, ſhall ſuffer ſuch pains by impriſonment of his or their bodies, or pay ſuch fine to our ſovereign lady the queen's majeſty, her heirs and ſucceſſors, as to the ſaid lord chancellor or lord keeper of the great ſeal (being informed thereof) by the commiſſioners ſo to be appointed, as is aforeſaid, or the more part of them, ſhall ſeem meet and convenient for their ſaid offence or offences.

The penalty of a bankrupt not yielding himſelf after proclamation, and of ſuch as do hide or receive him.

A remedy for the creditor, if he be not ſatisfied for his whole debt.

Sect. 10. "Provided always, and be it further enacted, That if the creditors of any ſuch offender or offenders, debtor or debtors which ſo do depart the realm, keep his or their houſe or houſes, or otherwiſe abſent, or withdraw him or themſelves into places unknown, or take ſanctuary, or will ſuffer him or themſelves to be arreſted or outlawed, or yield his or their bodies into priſon purpoſely, and for the cauſes aforeſaid, be not fully ſatisfied, or otherwiſe contented for their debts and duties, by the ways and means before ſpecified and declared; that then the ſaid creditor or creditors, and every of them, ſhall and may have their remedy for the recovery and levying of the reſidue of their ſaid debts or duties, whereof they ſhall be fully ſatisfied, paid, or otherwiſe contented in form aforeſaid, againſt the ſaid offender or offenders, in like manner and form as they ſhould and might have had before the making of this act: (2) and that the ſaid creditor or creditors, and every of them, ſhall be only barred and excluded, by virtue of this act, of and for every ſuch part and portion of the ſaid debts and duties as ſhall be paid, ſatisfied, diſtributed or delivered unto him or them, by order of the ſaid perſons, as is aforeſaid, and of no more portion or parcel thereof; any thing herein ſpecified that may be taken or conſtrued to the contrary nowithſtanding.

Lands, &c. extendable, which be purchaſed, or do deſcend to a bankrupt. 1 Cr. 568.

Sect. 11. "Provided always, and be it alſo enacted by the authority aforeſaid, That if any perſon or perſons, which is or ſhall be publiſhed and declared to be a bankrupt by virtue of this act, ſhall at any time after purchaſe any lands, tenements, hereditaments, free or copy, offices, fees, goods or chattels: (2) or that any lands, tenements, hereditaments, free or copy, offices, fees, goods or chattels, ſhall deſcend, revert or by any means come to any ſuch perſon or perſons, being bankrupts, as is aforeſaid, before ſuch time as their debts due to their creditors ſhall be fully ſatisfied and paid, or otherwiſe agreed for; (3) that then the ſaid lands, tenements, hereditaments, as well free as copy, offices, fees, goods and chattels, ſhall by virtue of this act, by the ſaid commiſſioners to be appointed, as is aforeſaid, or the more part of them, be bargained, ſold, extended, delivered and uſed for and towards the payment of the ſaid creditors, in ſuch like manner and form as other the lands, tenements, hereditaments, free or copy, offices, fees, goods and chattels of the ſaid bankrupts, which they had when they were declared firſt to be bankrupts, ſhould or might have been bargained, ſold, diſpoſed, or uſed by virtue of this act.

Lands conveyed away before the party become bankrupt. Moor 594 pl. 805. 2 Co 26.

Sect. 12. "Provided always, that this act ſhall not extend to any lands, tenements or hereditaments, free, or copyhold, which heretofore have been aſſured by any ſuch bankrupt, or hereafter ſhall be aſſured by any bankrupt before he became bankrupt: ſo that always ſuch aſſurance be made *bona fide*, and not to the uſe of the bankrupt himſelf only, or of his heirs: (2) and that the parties to whoſe uſe ſuch aſſurance hath or ſhall be made, be not, at or before the making of ſuch aſſurance, privy or conſenting to the fraudulent purpoſe of any ſuch bankrupt, to deceive his creditors. 21 *Jac.* 1. *c.* 19.

Stat.

Stat. 1 *Ja.* 1. *c.* 15. [*A. D.* 1603. Intituled] "An act for the better relief of the creditors againſt ſuch as ſhall become bankrupts." 1 Jac. 1. c. 15.

For that fraud and deceits, as new diſeaſes, daily increaſe amongſt ſuch as live by buying and ſelling, to the hindrance of traffick and mutual commerce, and to the general hurt of the realm, by ſuch as wickedly and wilfully become bankrupts: (2) and for that the deſcription of a bankrupt in former ſtatutes is not ſo fully expreſſed, nor the power given thereby to the commiſſioners for bankrupts ſo large as is meet, in ſuch caſes of deceit, to prevent the deceitful actions of bankrupts: An expoſition and addition to the ſtatute of bankrupts, made 34 & 35 H. 8. c. 4. 13 Eliz. c. 7.

Sect. 2. For remedy whereof, Be it further enacted by our ſovereign lord the king, and by the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and every ſuch perſon and perſons uſing, or that ſhall uſe the trade of merchandize, by way of bargaining, exchange, bartery, cheviſance, or otherwiſe in groſs, or by retail, or ſeeking his, her, or their trade of living by buying and ſelling, and being a ſubject-born of this realm or any the king's dominions, or denizen, who at any time ſithence the firſt day of this preſent parliament, or at any time hereafter ſhall depart the realm; (3) or begin to keep his or her houſe or houſes, or otherwiſe to abſent him or her ſelf, to take ſanctuary; (3) or ſuffer him or her ſelf willingly to be arreſted for any debt, or any thing not grown or due for money delivered, wares ſold, or any other juſt or lawful cauſe or good conſideration or purpoſes, (4) or hath or will ſuffer him or her ſelf to be outlawed, or yield him or her ſelf to priſon, (5) or willingly or fraudulently hath or ſhall procure him or her ſelf to be arreſted, or his or her goods, money or chattels, to be attached or ſequeſtred, (6) or depart from his or her dwelling-houſe, (7) or make or cauſe to be made any fraudulent grant or conveyance of his, her, or their lands, tenements, goods or chattels, (8) to the intent, or whereby his, her or their creditors, being ſubjects born as aforeſaid, ſhall and may be defeated or delayed for the recovery of their juſt and true debts, (9) or being arreſted for debt, ſhall after his, or her arreſt, lie in priſon ſix months or more upon that arreſt, or upon any other arreſt or detention in priſon for debt, and lie in priſon ſix months upon ſuch arreſt or detention, (10) ſhall be accounted and adjudged a bankrupt to all intents and purpoſes. Who ſhall be adjudged a bankrupt. 1 Bulſt. 134. in part repealed by 10 Annæ, c. 15. ſ. 1.

Sect. 3. "And be it further enacted by the authority of this preſent parliament, That the like commiſſions, orders, benefits and remedies, which are and be provided and limited by the ſaid former act of parliament (made in 13 nuper *Eliz. Reginæ*) againſt any bankrupts therein deſcribed, or for or concerning his, her or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes and debts, or any of them, ſhall be had, purſued, taken and expounded againſt ſuch perſon and perſons that are herein expreſſed to be bankrupts, his, her and their lands, tenements, hereditaments, fees and annuities, offices, goods, chattels, wares, merchandizes and debts, in ſuch like manner and form as the ſame ought or might have been, if the perſons herein deſcribed to be bankrupts, had The like commiſſions, orders, benefits and remedies as be provided for bankruprs by the ſtatute of 13 El. c. 7. 2 Bulſtr. 26.

been deſcribed to be bankrupts according to the intent of the ſaid former ſtatute.

New creditors partakers with the former. Hob. 287. Hutt. 37, 42.

Sect. 4. "And that it ſhall be lawful for any of the creditors of the ſaid bankrupt within four months after any ſuch commiſſion ſhall be ſued forth, and until diſtribution ſhall be made by the ſaid commiſſioners for the payment of the bankrupts debt, as in ſuch caſe hath been uſed, to partake and join with the other creditors that ſhall ſue forth any ſuch commiſſion, for ſatisfaction and payment of his, her or their debts, to him or them owing, without any hindrance, let or diſturbance of any of the ſame commiſſioners, or of any of the other creditors of any ſuch bankrupts, the ſame creditors ſo coming in, to contribute to the charges of the ſaid commiſſion; (2) and that if the creditors come not in within four months, then the commiſſioners to have power to diſtribute.

A bankrupt conveying his lands or goods to others, or transferring his debts into other mens names. Stiles 288.

Sect. 5. "Be it further enacted, That if any perſon which hereafter is or ſhall be a bankrupt, by intent of this ſtatute, ſhall convey or procure, or cauſe to be conveyed to any of his children or other perſon or perſons, any manors, lands, tenements, hereditaments, offices, fees, annuities, leaſes, goods, chattels, or transfer his debts into other mens names; (2) except the ſame ſhall be purchaſed, conveyed or transferred for or upon marriage of any of his or her children, both the parties married being of the years of conſent, or ſome valuable conſideration, (3) ſhall be in the power and authority of the commiſſioners in this behalf to be appointed, or the more part of them, to bargain, ſell, grant, convey, demiſe or otherwiſe to diſpoſe thereof, in as ample manner, as if the ſaid bankrupt had been actually ſeized or poſſeſſed thereof, or the debts were in his own name, of the like eſtate or intereſt to his or their own uſe, at ſuch time as he or ſhe became bankrupt; (4) And that every ſuch grant, bargain, ſale, conveyance and diſpoſition of the ſaid commiſſioners, or of the greater part of them, ſhall be good and available to all intents, conſtructions and purpoſes in the law, againſt the offender or offenders, his heirs, executors, adminiſtrators and aſſigns, and ſuch children and perſons as ſhall be ſubject to this ſtatute, and againſt all other perſon and perſons claiming by, from or under ſuch offender or offenders, or ſuch ſaid other perſons, to whom ſuch conveyance ſhall be made by the ſaid bankrupt, or by his means or procurement.

Sect. 6. "And for that the practices of bankrupts of late are ſo ſecret and ſo ſubtil, as that they can very hardly be found out or brought to light; (2) and for that the former ſtatute, giving power to the commiſſioners to examine others than the bankrupts, hath not fully or ſufficiently authorized them to examine the ſaid bankrupt upon oath: (3) for remedy whereof, Be it further enacted by the authority of this preſent parliament, That the ſaid commiſſioners may call before them, or the greater part of them, the ſaid bankrupt; (4) and if, upon lawful warning left or made in writing at three ſeveral times at the dwelling-place or houſe where the ſaid bankrupt, his wife or family, for the moſt part of his abode, did lodge or remain within one year next before he, ſhe or they became bankrupt, the ſaid bankrupt ſhall not appear before the ſaid commiſſioners, or the greater part of them, that then and from thenceforth it ſhall be lawful for the greater

In what caſe he that doth withdraw himſelf ſhall be proclaimed a bankrupt.

greater number of the ſaid commiſſioners to appoint to proclaim the ſaid party a bankrupt, at ſuch public place or places where the ſaid commiſſioners or the greater part of them ſhall think meet; warning him, her or them to appear before them upon the ſaid commiſſion, at ſome time appointed; (5) and that if upon five ſeveral proclamations made in ſome public place, the party offending appear not before the ſaid commiſſioners, and yield his, her or their bodies to them, or ſome of them, the ſaid commiſſioners, or the greater part of them, ſhall or may award a warrant to ſuch fit perſon or perſons as they think meet, to apprehend the body and bodies of the ſaid offender and offenders, and to bring him, her or them ſo offending, before the ſaid commiſſioners, whereſoever the ſaid party or parties offending may be found, in place privileged or not, to be examined by the ſaid commiſſioners, or the greater part of them."

A bankrupt apprehended, which upon warning refuſeth to appear.

Sect. 7. "And that it ſhall be lawful for the ſaid commiſſioners, or the greater part of them, to examine the ſaid offender or offenders, upon ſuch interrogatories touching the lands, tenements, goods, chattels, debts, bills, bonds, books of account, and ſuch other things as may tend to diſcloſe his, her or their eſtate, or their ſecret grants, conveyances, and eloining of his, her or their lands, tenements, goods, money and debts, as they ſhall think meet."

The examination of a bankrupt.

Sect. 8. "And that if therein the offender or offenders ſhall refuſe to be examined, or to anſwer fully to every interrogatory to him to be miniſtred by the ſaid commiſſioners, or the greater part of them, it ſhall be lawful for the ſaid commiſſioners, or the greater part of them, to commit the ſaid offender or offenders to ſome ſtrait or cloſe impriſonment, there to remain until he, ſhe or they ſhall better conform him or her ſelf.

A bankrupt refuſing to anſwer.

Sect. 9. "And that if upon his, her or their examination, it ſhall appear that he, ſhe or they have committed any wilful or corrupt perjury, tending to the hurt or damage of the creditors of the ſaid bankrupt, to the value of ten pounds of lawful money of *England*, or above, the party ſo offending ſhall or may thereof he indicted in any of the king's majeſty's courts of record, and being lawfully convicted thereof ſhall ſtand upon the pillory in ſome public place by the ſpace of two hours, and have one of his ears nailed to the pillory and cut off."

The puniſhment of a bankrupt committing perjury.

Sect. 10. "And whereas by the former ſtatute made in the ſaid thirteenth year of the reign of the late queen *Elizabeth*, the commiſſioners for bankrupts have power given them to ſend for ſuch perſon or perſons as the creditors ſhall know, ſuppoſe or ſuſpect to have, detain or keep any part of the money, goods, chattels or debts of the ſaid offender or offenders, or to be indebted to the ſaid offender or offenders, to be examined by the ſaid commiſſioners, as by the ſame ſtatute appeareth, but have not good means or remedy by impriſonment or orher penalty, to procure the perſon ſo ſent for by them to appear before them, nor having appeared before them, to make anſwer upon his oath, to ſuch interrogatories as ſhall be miniſtred unto him by the ſaid commiſſioners, for and upon the ſpecialty, certainty, true declaration and knowledge of ſuch lands, tenements, hereditaments, goods, debts or other things, of any ſuch offender or offenders, as be, or

13 El. c 7.

ſhall

ſhall be, or which ſhall be ſuſpected to be in his cuſtody, uſe or poſſeſſion, or in the cuſtody, uſe or poſſeſſion of any other to his knowledge, and of all debts owing to or for the benefit of ſuch offender or offenders, by himſelf or by any other to his knowledge; (2) ſo as many times a great part of the offender or offenders lands, tenements, hereditaments, goods chattels or debts, which, by the true intent of the ſaid ſtatute, ſhould be imployed to the ſatisfaction of the creditors of the offender or offenders, are concealed or detained in the hands of ſuch perſon and perſons as refuſe to come, or being come, refuſe to be ſworn before the ſaid commiſſioners, to be examined in that behalf, to the great encouragement of all bankrupts and their wicked confederates and acceſſories, and to the great hinderance of the juſt remedies of the creditors of the ſaid bankrupts, for their true and juſt debts to them owing: (3) for remedy whereof, Be it further enacted by the authority aforeſaid, That if any perſon or perſons being known, ſuppoſed or ſuſpected to have or detain any part of the lands, tenements or hereditaments, goods, chattels or debts of the ſaid bankrupt, or to be indebted to or for the benefit of the ſaid bankrupt, ſhall after lawful warning to the ſaid perſon or perſons given, to come before the ſaid commiſſioners or the greater part of them, to be examined according to the intent of the ſaid ſtatute, refuſe to come, or ſhall not come before the ſaid commiſſioners at the time appointed, having no lawful impediment (ſuch as ſhall be limited and allowed of by the ſaid commiſſioners, or the more part of them, and which ſhall be then ſignified or made known to the ſaid commiſſioners at the time of their aſſembly); (4) or that any ſuch perſon or perſons, having knowledge or warning of any other aſſembly or meeting of the ſaid commiſſioners again, ſhall not come and appear before them at ſuch time as he or ſhe lawfully may come, having no ſuch lawful impediment, as ſhall be then made known to the ſaid commiſſioners, and by them admitted and allowed of, as aforeſaid; (5) or being come before them, ſhall refuſe to be ſworn, and to make anſwer to ſuch interrogatories as ſhall be miniſtred unto him or them, according to the true intent and meaning of the ſaid ſtatute made in the ſaid thirteenth year of the reign of our ſaid ſovereign lady queen *Elizabeth*, or of this preſent act; (6) that then it ſhall be lawful for the ſaid commiſſioners, or for the greater part of them, to commit to ſuch ward and priſon, as to them, or to the greater part of them ſhall be thought meet, all ſuch perſon and perſons as ſhall ſo refuſe to be ſworn, and make anſwer to ſuch interrogatories as ſhall be ſo miniſtred, as aforeſaid, (7) and alſo to direct their warrants to ſuch perſon or perſons, as to them or the greater part of them ſhall be thought meet, to apprehend and arreſt ſuch perſon or perſons as ſhall refuſe to *come and* appear before them, as aforeſaid, and to bring him, her or them before the ſaid commiſſioners, or the greater part of them, to be examined as aboveſaid, (8) and upon his, her or their refuſal to come, or to be examined before the ſaid commiſſioners, as aforeſaid, to commit the ſaid party ſo refuſing, to ſuch priſon as the commiſſioners, or the greater part of them, ſhall think meet, there to remain without bail or mainprize, until ſuch time, as the ſaid perſon ſo refuſing to come, or to be ſworn to anſwer before the ſaid commiſſioners, ſhall ſubmit him

Examination of ſuch as have Bankrupts goods, or be indebted unto them.

The puniſhment of ſuch as will not appear, or not ſwear to anſwer to interrogatories.

5 Mod. 309.

or her ſelf to the ſaid commiſſioners, and be by them examined, according to the true intent of the ſaid ſtatute, and of this preſent act.

Sect. 11. "Provided always, That ſuch witneſſes as ſhall be ſo ſent for, ſhall have ſuch coſts and charges as the commiſſioners in their diſcretion ſhall think fit; the ſame charges to be rateably born by the creditors of the ſaid bankrupt, according to the proportion of each of their ſeveral debts: (2) And if any perſon or perſons, other than the bankrupt, either by ſubornation, unlawful procurement, ſiniſter perſuaſion, or means of any others, or by his own act, conſent or agreement, ſhall wilfully and corruptly commit any manner of wilful perjury by his depoſition to be taken before the ſaid commiſſioners, or the greater part of them, as aforeſaid, That then the party or parties ſo offending, and all and every perſon and perſons that ſhall unlawfully and corruptly procure any ſuch unlawful, wilful and corrupt perjury, ſhall and may therefore be indicted in any of the king's majeſty's courts of record, (3) and after his or their conviction thereof, ſhall incur ſuch forfeiture, and receive and ſuffer ſuch pains and puniſhment as are limited by the ſtatute made concerning perjury, in the fifth year of the reign of our late ſovereign lady queen *Elizabeth*."

Witneſſes allowed their coſts.

The penalty of others beſide the bankrupt committing perjury.

5 El. c. 9.

Sect. 12. "And be it further enacted, That all and every ſum and ſums of money, which ſhall be forfeited by force of this preſent act, ſhall be ſued for and recovered by the ſaid creditors only, or any of them that will ſue for the ſame, by action of debt, bill, plaint or information, in any of the king's majeſty's courts of record; and the ſum or ſums of money ſo recovered, the charges of ſuit being deducted, ſhall be diſtributed and divided towards the payment of the ſaid creditors of the bankrupt."

Who ſhall recover the forfeitures, and how they ſhall imploy them.

Sect. 13. "And for that the power and authority given to the commiſſioners of bankrupts touching the debts due to the ſaid bankrupt, is not ſo full and perfect, as that the full benefit thereof in due courſe might be employed to the uſe of the ſaid creditors, as was intended: (2) For remedy thereof, be it further enacted by the authority aforeſaid, That the commiſſioners of bankrupts, or the greater part of them, ſhall have power to grant and aſſign, or otherwiſe to order or diſpoſe all or any of the debts due or to be due, to and for the benefit of the ſaid bankrupt, by what perſon or perſons ſoever, or in what manner and form ſoever, to the uſe of the creditors of the ſaid bankrupt, according to the true intent of the ſaid former recited ſtatute of bankrupts; (3) and that the ſame grant, aſſignment or diſpoſition of the ſaid debts, in form aforeſaid, to be made by the ſaid commiſſioners, or the greater part of them, ſhall ſo veſt the property, right and intereſt of the ſaid debt and debts, in the perſon or perſons of him, her or them to whom it ſhall be granted, aſſigned or ordered by the ſaid commiſſioners, or the greater part of them, as fully to all intents and purpoſes, as if the ſaid bill, bond, bonds, ſtatutes, recognizances, judgment or contract, whereupon the ſaid debt or debts, deed or deeds ſhall ariſe or grow, had been made to or with, or for the ſaid perſon or perſons to whom the ſame ſhall be ſo granted, aſſigned or diſpoſed by

The authority of commiſſioners touching debts due to a bankrupt.

1 Salk. 108.

by the ſaid commiſſioners; (4) and that after ſuch grant, aſſignment or diſpoſition made of the ſaid debts, that neither the bankrupt, nor any other to whom any ſuch debt ſhall be due, ſhall have power to recover the ſame, nor to make any releaſe or diſcharge thereof, (5) neither ſhall the ſame be attached as the debt of the bankrupt, or ſuch ſaid other perſon or perſons to whom the ſame ſhall be due, by any other perſon or perſons, according to the cuſtom of the city of *London*, or otherwiſe, (6) but that the party or parties to whom the ſame debt ſhall be aſſigned, ſhall have like remedy to recover the ſame, as fully and lawfully, in the name or names of the perſon or perſons to whom the ſame ſhall be ſo granted, aſſigned or ordered by the ſaid commiſſioners, in all reſpects and purpoſes, as the party himſelf might have had; any law, ſtatute, uſe or cuſtom to the contrary thereof in any wiſe notwithſtanding."

The remedy for the creditor to recover a bankrupt's debt aſſigned to him by the commiſſioners.

Sect. 14. "Provided always, That no debtor of the bankrupt be hereby endangered for the payment of his or their debt, truly and *bona fide*, to any ſuch bankrupt, before ſuch time as he ſhall underſtand or know that he is become a bankrupt."

Sect. 15. "Provided alſo, and be it further enacted, That ſuch of the ſaid commiſſioners as ſhall put the ſaid commiſſion in execution, ſhall upon lawful requeſt to them made by the ſaid bankrupt, not only make a true declaration to the ſaid bankrupt of the employing and beſtowing of his, her or their ſaid lands, tenements and hereditaments, offices, fees, goods, wares, money, chattels and debts which ſhall be paid and ſatisfied to their ſaid creditors, as is in like caſe limited and appointed by the ſaid former ſtatute made in the ſaid thirteenth year of the ſaid late queen's majeſty's reign, but alſo make payment of the overplus of the ſame, if any ſuch ſhall be, to the ſaid bankrupts, their executors, adminiſtrators and aſſigns; (2) and that the ſaid bankrupts, after the full ſatisfaction of the ſaid creditors, ſhall have full power and authority to recover and receive the reſidue and remainder of the debts to them owing; any thing in this act contained to the contrary in any wiſe notwithſtanding."

Commiſſioners ſhall declare to the bankrupt how they have beſtowed his lands and goods.

Sect. 16. "Be it further enacted, That if any action of treſpaſs, or other ſuit ſhall happen hereafter to be brought againſt any commiſſioner authorized by the ſtatute made *in Decimo tertio* of our late ſovereign lady queen *Elizabeth*, for bankrupts, or any other perſon or perſons, having authority by virtue or under the commiſſion authorizing the ſaid commiſſioner for the doing or executing of any matter by force of the ſaid ſtatute, or this preſent ſtatute, That the defendant or defendants in any ſuch action or ſuit may plead not guilty, (2) or otherwiſe juſtify, That the act or thing whereof the plaintiff or plaintiffs complained, was done by authority of the ſaid act made in the thirteenth of *Elizabeth*, or in this preſent act reſpectively, (3) without expreſſing or rehearſal of any other matter of circumſtance contained in either of the ſaid acts, and without enforcing him or them to ſhew forth their commiſſion authoriſing the ſaid act or thing; (4) whereunto the plaintiff ſhall be admitted to reply, That the defendant did the fact ſuppoſed in the declaration, of his own wrong, without any ſuch cauſe alledged by the ſaid defendant; whereupon the iſſue in ſuch action ſhall

13 El. c. 7.

The commiſſioners plea in an action brought againſt them.

be

be joined to be tried by verdict of twelve men; (5) and upon the trial of that iſſue, the whole matter to be given on both parties in evidence, according to the very truth of the ſame; (6) and if verdict upon ſuch iſſue ſhall paſs for the defendant, the defendant to have his coſts."

Sect. 17. "Provided always, and be it further enacted, That after any commiſſion of bankrupts hereafter ſued forth, and dealt in by the commiſſioners, the offender happen to die before the commiſſioners ſhall diſtribute the goods, lands and debts of the offenders, or any of them, by force of the aforeſaid ſtatute of the thirteenth year of the reign of our late ſovereign lady queen *Elizabeth*, and this ſtatute or either of them, That then nevertheleſs the ſaid commiſſioners ſhall and may in that caſe proceed in execution, in and upon the ſaid commiſſion for and concerning the offenders goods, lands, tenements, hereditaments and debts, in ſuch ſort as they might have done if the party offender were living. 21 *Jac.* 1. *c.* 19." The commiſſioners ſhall proceed to execution, tho' the bankrupt die.

Stat. 21 *Jac.* 1. *c.* 19. [*A. D.* 1623. *intituled*] "An act for the further deſcription of a bankrupt, and relief of creditors againſt ſuch as ſhall become bankrupts, and for inflicting corporal puniſhment upon the bankrupts in ſome ſpecial caſes."

"Foraſmuch as daily experience ſheweth, that the number and multitude of bankrupts do increaſe more and more, and alſo the frauds and deceits invented and practiſed for the avoiding and deluding the penalties of the good laws in that behalf already made, and the remedy by them provided: (2) And for that divers defects are daily found in the former ſtatutes made againſt bankrupts, both in a deſcription of a bankrupt, as alſo in the power given to the commiſſioners for the diſcovery and diſtributing the bankrupt's eſtate, to the great encouragement of evil-minded perſons, the hindrance of traffick and commerce, the great decay, overthrow, and undoing of many clothiers, by whom many thouſands of the natural-born ſubjects of this realm, be from time to time in all parts of this kingdom ſet on work: All which do tend to the general hurt of this realm: (3) For remedy whereof, Be it enacted by the king's moſt excellent majeſty, the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and ſingular the aforeſaid ſtatutes and laws heretofore made againſt bankrupts, and for relief of creditors, ſhall be in all things largely and beneficially conſtrued and expounded for the aid, help and relief of the creditors of ſuch perſon or perſons, as already be, or hereafter ſhall become bankrupt:" Laws made againſt bankrupts ſhall be beneficially conſtrued for the creditors. 34 & 35 H. 8. c. 4. 13 El. c. 7. 1 Jac. 1. c. 15.

Sect. 2. "And that all and every perſon or perſons uſing, or that ſhall uſe the trade of merchandize, by way of bargaining, exchange, bartering, cheviſance, or otherwiſe in groſs, or by retail; (2) or ſeeking his or her living by buying and ſelling; (3) or that ſhall uſe the trade or profeſſion of a Scrivener, receiving other mens monies or eſtates into his truſt, or cuſtody; (4) who at any time after the end of this preſent ſeſſions of parliament, ſhall either by himſelf, or others by his procurement, obtain Who ſhall be deemed a bankrupt. March 34. In part repealed by 10 Annæ, c. 15. ſect. 1.

any protection or protections, other than such person or persons as shall
2 Show. 513. be lawfully protected by the privilege of parliament; *(5)* or shall prefer or exhibit unto his majesty, his heirs or successors, or unto any of the king's courts, any petition or petitions, bill or bills against his or her creditor or creditors, or any of them, thereby desiring or endeavouring to compel or enforce them, or any of them, to accept less than their just and principal debts, or to procure time, or longer days of payment, than was given at the time of their original contracts; *(6)* or being indebted to any person
Skin. 270. 1 Salk. 109. Mod. Cases in law 49. or persons in the sum of one hundred pounds or more, shall not pay, or otherwise compound for the same, within six months next after the same shall grow due, and the debtor be arrested for the same; *(7)* or within six months after an original writ sued out to recover the said debt, and notice thereof given unto him, or left in writing at his or their dwelling-house or last place of abode, or being arrested for debt, shall after his or her arrest lie in prison two months or more, upon that, or any other arrest or detention in prison for debt: (8) or being arrested for the sum of one hundred pounds or more, of just debt or debts, shall at any time after such arrest, escape out of prison, or procure his enlargement by putting in common or hired bail; (9) shall be accounted and adjudged a bankrupt to all intents and purposes: *(10)* And in the said cases of arrest, or lying in prison for such debt or debts, or getting forth by common or hired bail, from the time of his or her said first arrest."

Commissions, orders, &c. provided by 13 El. c. 7. & 1 Jac. 1. c. 15. shall be pursued against him that is described to be a bankrupt by this act.

Sect. 3. "And be it further enacted by the authority of this present parliament, That the like commissions, orders, benefits and remedies which are and be provided and limited by the said former acts of parliament, made in the thirteenth year of the late queen *Elizabeth*, and in the first year of the reign of our sovereign lord the king's majesty, against any bankrupts, in them, or either of them described, or for, or concerning his, her, or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares merchandize and debts, or any of them, shall and may be had, pursued, taken, and expounded against such person and persons as are herein and hereby declared, described, or expressed to be bankrupts, and against his, her and their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandize and debts, in such manner and form as the same ought, and might have been, if the persons herein declared, described, or expressed to be bankrupts, had been by the said statutes, or either of them, described to be bankrupts, to all intents and purposes whatsoever.

Orders, &c. provided by this act, shall be pursued against him that is described to be a bankrupt by, 13 El. c. 7. & 1 Jac. 1. c. 15.

Sect. 4. "And be it further enacted by the authority aforesaid, That the same orders, benefits and remedies, which are, and be provided and limited by this present act against any bankrupts, in or by this act declared, described or expressed to be bankrupts, or for, or concerning his, her or their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes, and debts, or any of them, or the discovery of them, or any of them, shall from henceforth be had, pursued, taken and expounded against such person and persons, as are declared or expressed

expreſſed to be bankrupts by the ſaid former acts of parliament, or either of them, and againſt his, her, and their lands, tenements, hereditaments, fees, annuities, offices, goods, chattels, wares, merchandizes and debts, in ſuch manner and form as the ſame ought and might have been, if the perſons in the former ſtatutes, or either of them, deſcribed to be bankrupts, had been mentioned and deſcribed to be bankrupts in and by this preſent act."

Sect. 5. "And whereas by the former laws, the commiſſioners appointed have power to examine the bankrupt himſelf, and ſuch perſon or perſons as are ſuſpected to have, or detain any of the eſtate, goods or chattels of the bankrupts; but ſome doubt hath been made, whether the commiſſioners have power to examine the wives of the bankrupts touching the ſame, by reaſon whereof the bankrupts wives do daily conceal and convey away, and cauſe to be conveyed away much part of their huſbands monies, wares, goods, merchandize and other eſtate, to perſon or perſons unknown to any but ſuch wives, by reaſon whereof much of the bankrupt's eſtate is concealed, and detained from the creditors:"

The bankrupt's wife may be examined by the commiſſioners.

Sect. 6. "For clearing therefore the ſaid doubt, and avoiding the inconveniences aforeſaid, Be it declared and enacted by the authority aforeſaid, That after ſuch time as any perſon ſhall by the ſaid commiſſioners executing the ſaid commiſſion, or the greater part of them, be lawfully adjudged or declared to be a bankrupt, the ſaid commiſſioners executing ſuch commiſſion, ſhall have power and authority to examine upon oath the wife and wives of all and every ſuch bankrupt, for the finding out, and diſcovery of the eſtate and eſtates, goods and chattels of ſuch bankrupt or bankrupts, concealed, kept or diſpoſed of by ſuch wife or wives, in their own perſons, or by their own act or means, or by any other perſon or perſons; (2) and that ſhe and they, the ſaid wife and wives, ſhall incur ſuch danger and penalty for not coming before the ſaid commiſſioners, or for refuſing to be ſworn and examined, or for not diſcloſing the truth, upon her or their examination or examinations, as in and by the ſaid former laws, or either of them, is already made and provided againſt any other perſon or perſons in like caſes."

The bankrupt that fraudulently concealeth his goods, or rendreth not ſome juſt reaſon why he became bankrupt, ſhall be ſet upon the pillory, and loſe one of his ears.

Sect. 7. "And be it further enacted by the authority aforeſaid, That if any bankrupt ſhall upon his, or her examination or examinations, to be taken before the ſaid commiſſioners, executing the ſaid commiſſion, be found fraudulently or deceitfully to have conveyed away his or her goods, chattels, lands, tenements, offices, fees, rents or annuities, or other eſtate, or any part thereof, to the value of twenty pounds or above, to the end and purpoſe to hinder the execution of this ſtatute, or of any other the aforeſaid ſtatutes, or thereby to defraud, delay or hinder his or her creditors of the ſame, and ſhall not, upon his or her examination, diſcover unto the ſaid commiſſioners, and (if it lie in his or her power) deliver unto the ſaid commiſſioners all that eſtate, goods and chattels ſo fraudulently and deceitfully conveyed away, as aforeſaid; or by him or her, his or her means, kept and detained from the ſaid commiſſioners, or that cannot make it appear unto the ſaid commiſſioners, that he or ſhe hath ſuſtained ſome caſual

loſs, whereby he or ſhe is diſabled to pay what he or ſhe then owed, ſhall or may be indicted for ſuch fraud or abuſe at the aſſizes or general ſeſſions to be holden before the judges of aſſize, or juſtices of the peace of the county or place where he or ſhe ſhall become bankrupt: (2) And if upon ſuch indictment or indictments, the bankrupt be thereof convicted, he or ſhe ſo convicted ſhall be ſet upon the pillory in ſome publick place, for the ſpace of two hours, and have one of his or her ears nailed to the pillory and cut off."

The commiſſioners may break open the bankrupt's doors, &c.

Sect. 8. "And for that ſome doubt is conceived, whether the commiſſioners, in caſe of reſiſtance, have power by the former laws to break open, or cauſe to be broken open, the houſe or houſes of ſuch bankrupts, which if they have not, the remedies by the former laws given will be to little effect: (2) Be it therefore enacted, that in execution of the ſaid commiſſion, it ſhall be lawful to and for the ſaid commiſſioners, or the greater part of them, or any other perſon or perſons, officer or officers, by them, or the greater part of them, to be deputed and appointed by their warrant or warrants under their hands and ſeals, to break open the houſe or houſes, chambers, ſhops, ware-houſes, doors, trunks or cheſts of the ſaid bankrupt, where the ſaid bankrupt, or any of his or her goods or eſtate, ſhall be, or reputed to be, and to ſeize upon, and order the body, goods, chattels, ready money, and other eſtate of ſuch bankrupt, as by the ſaid former laws are limited and appointed, whether it be by impriſonment of his or her body, or otherwiſe, as to the ſaid commiſſioners, or the greater part of them, ſhall be thought meet.

The bankrupt's goods ſhall be ratably divided, notwithſtanding any judgment, recognizance, &c.

Sect. 9. "And for the better d viſion and diſtribution of the lands, tenements, hereditaments, goods, chattels, and other eſtate of ſuch bankrupt, to and amongſt his or her creditors; (2) Be it enacted, that the commiſſioners, or the greateſt part of them, ſhall and may examine upon oath, or by any other ways or means as to them ſhall ſeem meet, any perſon or perſons, for the finding out, and diſcovery of the truth and certainty of the ſeveral debts due, and owing to all ſuch creditor and creditors as ſhall ſeek relief by ſuch courſe of commiſſion to be iſſued forth, as aforeſaid: (3) and that all and every creditor and creditors having ſecurity for his or their ſeveral debts, by judgment, ſtatute, recognizance, ſpecialty with penalty or without penalty, or other ſecurity, or having no ſecurity, or having made attachments in *London*, or any other place, by virtue of any cuſtom there uſed, of the goods and chattels of any ſuch bankrupt, whereof there is no execution or extent ſerved and executed upon any the lands, tenements, hereditaments, goods, chattels, and other eſtate of ſuch bankrupt, before ſuch time as he or ſhe ſhall or do become bankrupt, ſhall not be relieved upon any ſuch judgment, ſtatute, recognizance, ſpecialty, attachments, or other ſecurity, for any more than a ratable part of their juſt and due debts, with the other creditors of the ſaid bankrupt, without reſpect to any ſuch penalty or greater ſum contained in any ſuch judgment, ſtatute, recognizance, ſpecialty, with penalty, attachment, or other ſecurity.

The commiſſioners may

Sect. 10. "And be it further enacted, That if it ſhall happen, any the lands, tenements, goods, chattels, debts, or other eſtate of any bankrupt,

to

to be extended, after ſuch time as he or ſhe is become a bankrupt, by any perſon or perſons, under colour or pretence of his or their being an accountant, or any way indebted unto our ſovereign lord the king's majeſty, his heirs or ſucceſſors, that then it ſhall be lawful to and for the ſaid commiſſioners, to examine upon oath, whether the ſaid debt were due to ſuch debtor or accountant, upon any bargain or contract originally made betwixt ſuch accountant and the ſaid bankrupt, the ſaid debtor and accountant, and his or their ſervants: (2) and if ſuch bargain or contract was originally made, to and with any other perſon or perſons than the ſaid debtor or accountant, or for the uſe and truſt of any other perſon or perſons, then it ſhall and may be lawful to and for the ſaid commiſſioners, or the greater part of them, to order and diſpoſe of all ſuch lands, tenements, hereditaments, goods, chattels, and debts ſo extended as aforeſaid, to and for the uſe of the creditors which ſhall ſeek relief by the ſaid commiſſion; (3) and that the order and diſpoſition of the ſaid commiſſioners, or the greater part of them, ſhall be good and available againſt the ſaid extent, and againſt all perſons claiming from, by or under the ſaid extent: (4) And that ſuch perſon and perſons, to whom the ſaid lands, tenements, goods and chattels ſo extended ſhall be bargained, ſold, granted or aſſigned by the commiſſioners aforeſaid, or the greater part of them, ſhall have good remedy to have, demand and recover the ſame, and againſt ſuch perſon and perſons who ſhall detain the ſame: (5) and for that it often falls out, that many perſons, before they become bankrupts, do convey their goods to other men upon good conſideration, yet ſtill do keep the ſame, and are reputed the owners thereof, and diſpoſe the ſame as their own:

proceed when the bankrupt by fraud makes himſelf accountant to the king.

Sect. 11. "Be it enacted, that if at any time hereafter, any perſon or perſons ſhall become bankrupt, and at ſuch time as they ſhall become bankrupt, ſhall by the conſent and permiſſion of the true owner and proprietary, have in their poſſeſſion, order and diſpoſition, any goods or chattels, whereof they ſhall be reputed owners, and take upon them the ſale, alteration or diſpoſition as owners, That in every ſuch caſe, the ſaid commiſſioners, or the greater part of them, ſhall have power to ſell and diſpoſe the ſame, to and for the benefit of the creditors which ſhall ſeek relief by the ſaid commiſſion, as fully as any other part of the eſtate of the bankrupt: (2) And for the better payment of debts, and diſcouraging men to become bankrupts:

Goods in the Poſſeſſion, &c. of the bankrupt, are liable to pay his debts, notwithſtanding any former grant, &c.

Sect. 12. "Be it further enacted, That the ſaid commiſſioners, or the greater number of them, ſhall have power by virtue of this act, by deed indented and inrolled, within ſix months after the making thereof, in ſome of his majeſty's courts of record at *Weſtminſter*, to grant, bargain, ſell and convey any manors, lands, tenements or hereditaments, whereof any bankrupt is or ſhall be in any ways ſeiſed of an eſtate in tail, in poſſeſſion, reverſion or remainder, and whereof no reverſion or remainder is, or ſhall be in the king's majeſty, his heirs or ſucceſſors, of the gift or proviſion of his majeſty, his progenitors, his heirs or ſucceſſors, to any perſon or perſons, for the relief and benefit of the creditors of all ſuch bankrupts; (2) and that all and every ſuch grants, bargains, ſales and conveyances ſhall be

A grant of the intailed lands of the bankrupt ſhall be good.

be good and available in the law to ſuch perſon or perſons and their heirs, againſt the ſaid bankrupts, and againſt all and every the iſſues of the body of ſuch bankrupts, and againſt all and every perſon and perſons claiming any eſtate, right, title or intereſt, by, from or under the ſaid bankrupts, after ſuch time as ſuch perſon ſhall become bankrupt, and againſt all and every other perſon and perſons whatſoever, whom the ſaid bankrupt by common recovery, or other ways or means might cut off, or debar from any remainder, reverſion, rent, profit, title or poſſibility, into or out of any the ſaid manors, lands, tenements or hereditaments.

Conditional eſtates granted by the bankrupt, may be redeemed by the commiſſioners.

Sect. 13. " And be it further enacted, that if any perſon that now is, or hereafter ſhall become a bankrupt, have heretofore granted, conveyed or aſſured, or ſhall at any time hereafter, grant, convey or aſſure any lands, tenements, hereditaments, goods, chattels, or other eſtate, unto any perſon or perſons, upon condition, or power of redemption at a day to come, by payment of money, or otherwiſe, That it ſhall and may be lawful to and for the ſaid commiſſioners, or the greater part of them, before the time of the performance of ſuch condition, to aſſign and appoint under their hand and ſeals, ſuch perſon or perſons as they ſhall think fit, to make tender or payment of money, or other performance, according to the nature of ſuch condition, as fully as the bankrupt might have done; (2) and that the ſaid commiſſioners, or the greater part of them, ſhall after ſuch tender, payment or performance, have power to ſell and diſpoſe of ſuch lands, tenements, hereditaments, goods and chattels and other eſtates ſo granted, conveyed or aſſured upon condition, to and for the benefit of the creditors, as fully as they may ſell or diſpoſe of any the eſtate of the bankrupt.

The commiſſion ſhall be ſued forth within five years.

Sect. 14. " Provided further, that no purchaſer, for good and valuable conſideration, ſhall be impeached by virtue of this act, or any other act heretofore made againſt bankrupts, unleſs the commiſſion to prove him or her a bankrupt, be ſued forth againſt ſuch bankrupt within five years after he or ſhe ſhall become a bankrupt."

Strangers ſhall take advantage of this, and all other laws againſt bankrupts.

Sect. 15. " Provided further, and be it enacted by the authority aforeſaid, That this act, and all other acts of parliament heretofore made againſt bankrupts, ſhall extend to ſtrangers born, as well aliens as denizens, as effectually as to the natural-born ſubjects, both to make them ſubject to the laws as bankrupts, as alſo to make them capable of the benefit or contribution, as creditors by thoſe laws. 13 & 14 Car. 2. cap. 24.

14 Car. 2. c. 24.

Stat. 14 *Car.* 2. *c.* 24. [*A. D.* 1662. *intituled*] " An act declaratory concerning bankrupts."

Whereas divers noblemen, gentlemen, and perſons of quality, no way, bred up to trade or merchandize, do oftentimes put in great ſtocks of money into the *Eaſt-India* company, or *Guiney* company, and the fiſhing trade and ſuch other publick ſocieties, and receive the procede of thoſe ſtocks ſometimes in ready monies, ſometimes in commodities, which they uſually ſell for money, or exchange again, by which means the trade of thoſe companies

panies is much encouraged, fiſhing and navigation increaſed, and the publick good of thoſe companies is much advanced.

Notwithſtanding which great advantage to the publick, there hath been lately ſome opinion conceived that ſuch perſons may, and ought to be made ſubject to the ſtatutes provided againſt bankrupts: 34 H. 8. cap 4. 13 El cap. 7. 1 Jac cap 15. 21 Jac. cap. 19.

For the better declaring and explaining the law therein, and to the end ſuch perſons may not be diſcouraged in thoſe honourable endeavours for promoting publick undertakings: Be it declared and enacted by the king's moſt excellent majeſty, with the advice and aſſent of the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That no perſon or perſons whatſoever, who have adventured or put in, or who hereafter ſhall adventure or put in any ſum or ſums of money, in the ſaid *Eaſt India* company, or *Guiney* company, or into any joint ſtock or ſtocks of money by them made, or raiſed, or to be made and raiſed, for and towards the maintaining and carrying on the trade by the ſaid *Eaſt India* company, or *Guiney* company, managed, or to be managed, or who have formerly, or ſhall hereafter adventure or put in any ſum or ſums of money into any ſtock or ſtocks of money, for the managing and carrying on of the ſaid fiſhing trade, or the trade now called the Royal fiſhing trade, and ſhall receive and take his or their part, or dividend of fiſh, goods or merchandizes in *ſpecie*, and ſhall ſell, or exchange the ſame, ſhall for or by reaſon only of ſuch adventure of moneys ſo put into the *Eaſt-India* company, or *Guiney* company, or into any ſtock or ſtocks, for and towards the ſaid fiſhing trade, or for, or by reaſon only of the receiving and taking ſuch fiſh, goods, and merchandizes in *ſpecie*, or ſelling for money, or exchanging the ſame again, be adjudged, taken, eſteemed or reputed a merchant or trader within any ſtatute or ſtatutes for bankrupts, or be liable to the ſame. No perſons for putting money to the Eaſt India or Guiney company, or the fiſhing trade, ſhall be eſteemed a trader within the ſtatute of bankrupts.

Provided always, and it is hereby declared, That every perſon or perſons, who ſhall trade, traffick or merchannize in any other way or manner, than in the ſaid Royal fiſhing trade, or the trade managed by the ſaid *Eaſt-India* company, or the *Guiney* company as aforeſaid, ſhall for and by reaſon of his and their trading, trafficking, and merchandizing, be liable to commiſſion and commiſſions againſt bankrupts, as fully to all intents and purpoſes, and not otherwiſe, as if this act had never been made; any thing in this act to the contrary notwithſtanding. Proviſo for others trading.

And be it further enacted, That a verdict and judgment in replevin heretofore had or given in the term of *Eaſter* in the year one thouſand ſix hundred fifty-three, in the *Kings Bench*, betwixt *Phineas Andrews* plaintiff, *Richard Woolward*, and *William Meggs* defendants, whereby Sir *John Wolſtenholme* knight, an adventurer in the ſaid *Eaſt-India* company, was adjudged and found liable to a commiſſion of bankrupts only for and by reaſon of a ſhare he had in the joint-ſtock of the ſaid company, and a pretended ſelling for money part of the return, which he had in *ſpecie* for his ſaid adventure, ſhall be, and is hereby declared contrary to law, and is hereby reverſed, and made void and null. The judgment concerning Sir John Woiſtenholme, made void.

Pro-

Proviſo for purchaſers in the caſe of Sir John Wolſtenholme.

Provided always, and be it enacted, That no act, ſale or diſpoſition of any of the lands, tenements, hereditaments, goods, chattels, debts or credits of the ſaid Sir *John Wolſtenholme*, or any diſtribution of the ſame, or of any money, heretofore made or done by the commiſſioners of bankrupts, or any claiming under them, or any of them, by virtue or colour of any commiſſion or commiſſions taken out againſt the ſaid Sir *John Wolſtenholme*; and whereof any perſon or perſons is by virtue or colour of, or under any ſuch act, ſale or diſpoſition, actually ſeiſed or poſſeſſed, ſhall be hereby impeached, or fruſtrated, but that the ſame be enjoyed for and toward ſatisfaction of the debts, for which the ſame have been diſpoſed or diſtributed.

By ſtat. *Ann. c.* 7. 13. [*A. D.* 1708. intituled, "An act for preſerving the privileges of ambaſſadors."] *ſect.* 5. "It is provided, that no merchant or other trader whatſoever, within the deſcription of any of the ſtatutes againſt bankrupts, who hath or ſhall put himſelf into the ſervice of any ſuch ambaſſador or publick miniſter, ſhall have or take any manner of benefit by that act."

10 An. c. 15. **Stat.** 10 *Ann. c.* 15. [*A. D.* 1711. *intituled*] "An act for repealing a clauſe in the ſtatute made in the twenty-firſt year of the reign of king *James* the firſt, [intituled, *An act for the further deſcription of a bankrupt, and relief of creditors, againſt ſuch as ſhall become bankrupts, and for inflicting corporal puniſhment upon the bankrupts, in ſome ſpecial caſes*,] which makes deſcriptions of bankrupts; and for the explanation of the laws relating to bankruptcy, in caſe of partnerſhip."

21 Ja. 1. c. 19. "Whereas by an act made in the one and twentieth year of the reign of king *James* the firſt, [intituled, *An act for the further deſcription of a bankrupt, and relief of creditors againſt ſuch as ſhall become bankrupts, and for inflicting corporal puniſhment upon the bankrupts, in ſome ſpecial caſes*;] it is, (amongſt other things) enacted, That all and every perſon or perſons uſing, or that ſhould uſe the trade of merchandize, by way of bargaining, exchange, bartering, cheviſance, or otherwiſe, in groſs or by retail, or ſeeking his or her living by buying and ſelling, or that ſhould uſe the trade or profeſſion of a ſcrivener, receiving other mens monies or eſtates into his truſt or cuſtody, who, at any time after the end of the ſaid ſeſſion of parliament, being indebted to any perſon or perſons in the ſum of one hundred pounds or more, ſhould not pay or otherwiſe compound for the ſame within ſix months next after the ſame ſhould grow due, and the debtor be arreſted for the ſame, or within ſix months after an original writ ſued out to recover the ſaid debt, and notice thereof given unto him, or left in writing at his or their dwelling-houſe or laſt place of abode, or being arreſted for the ſum of one hundred pounds or more of juſt debt or debts, ſhould, at any time after ſuch arreſt, procure his enlargement by putting in common or hired bail, ſhould be accounted and adjudged a bankrupt to all intents and purpoſes, and in the ſaid caſes of arreſt, or getting forth by common or hired bail, from the time of his or her ſaid firſt arreſt: And whereas it is found by experience, that many and great miſchiefs and inconveniencies have happened, eſpecially of late, to trade

and credit in general, by reaſon of the ſaid deſcriptions of a bankrupt: For remedy thereof for the future; Be it enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by authority of the ſame, That the ſaid act, and alſo all and every other act and acts of parliament whatſoever, ſo far forth as they relate to the ſaid deſcriptions of a bankrupt, be, from and after the twentieth day of *April* in the year of our Lord one thouſand ſeven hundred and twelve, repealed and made void; and that no perſon or perſons whatſoever, within the ſaid deſcriptions, or any of them, ſhall, from and after the ſaid twentieth day of *April*, for or by reaſon of the ſame, be taken or adjudged to be within the ſtatute or ſtatutes of bankrupt whatſoever.

After April 20, 1712. the recited act, and all others, ſo far as they relate to the deſcription of a bankrupt, are repealed.

Sect. 2. "Provided nevertheleſs, and be it enacted by the authority aforeſaid, That no act, ſale or diſpoſition of any the eſtate of ſuch perſons within the ſaid deſcription, or any diſtribution of the ſame, by or under any commiſſion or commiſſions of bankruptcy, before the ſaid twentieth day of *April*, taken out againſt ſuch perſon or perſons, ſhall be hereby impeached or fruſtrated, but that the ſame ſhall be enjoyed for and towards ſatisfaction of the debts for which the ſame have been diſpoſed or diſtributed.

Not to fruſtrate any act, ſale, &c. of the eſtates of ſuch perſons, by any commiſſion taken out before the ſaid 20th of April.

Sect. 3. "And whereas a doubt has ariſen upon an act made in the fourth year of her majeſty's reign, [intituled, *An act to prevent frauds frequently committed by bankrupts*,] whether the diſcharge of a bankrupt, by virtue of that act, ſhould be conſtrued to diſcharge the partners of ſuch bankrupt from the ſame debt; Be it therefore further enacted and declared by the authority aforeſaid, That by the diſcharge of any bankrupt or bankrupts, by force of the ſaid act or any other acts relating to bankrupts, from the debts by him, her, or them due and owing at the time that he, ſhe, or they did become a bankrupt, ſhall not be conſtrued, nor was meant or intended to releaſe or diſcharge any other perſon or perſons who was or were partner or partners with the ſaid bankrupt in trade, at the time he, ſhe, or they became a bankrupt, or then ſtood jointly bound, or had made any joint contract together with ſuch bankrupt or bankrupts, for the ſame debt or debts from which he was diſcharged, as aforeſaid, but that notwithſtanding ſuch diſcharge, ſuch partner and partners, joint obligor and obligors, and joint contractors with ſuch bankrupt and bankrupts, as aforeſaid, ſhall be and ſtand chargeable with, and liable to pay ſuch debt and debts, and to perform ſuch contracts, as if the ſaid bankrupt and bankrupts had never been diſcharged from the ſame."

4 Ann. c. 17.

By the diſcharge of a bankrupt his partner ſhall not be diſcharged.

Stat. 7 *Geo.* 1. *c.* 31. [*A D.* 1720. *intituled*] "An act for explaining and making more effectual the ſeveral acts concerning bankrupts."

7 Geo. 1. c. 31.

"Whereas merchants, and other traders in goods, have been often obliged, and more eſpecially of late years, to ſell and diſpoſe of their goods and merchandizes to ſuch perſons as have occaſion for the ſame,

upon truſt or credit, and to take bills, bonds, promiſſory notes, or other perſons ſecurities for their monies, payable at the end of three, four, or ſix months, or other future days of payment, and the buyers of ſuch goods becoming bankrupts, and commiſſions of bankruptcy being taken out againſt them before the money upon ſuch bonds, notes, or other ſecurities became payable, it hath been a queſtion whether ſuch perſons, giving ſuch credit on ſuch ſecurities, ſhould be let in to prove their debts, or be admitted to have any dividend, or other benefit by the commiſſion, before ſuch time as ſuch ſecurities became payable; which hath been a great diſcouragement to trade, and great prejudice to credit within this realm: For remedy whereof Be it enacted and declared by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons in this preſent parliament aſſembled, and by authority of the ſame, That all and every perſon and perſons, who have given credit, or at any time or times hereafter ſhall give credit on ſuch ſecurities, as aforeſaid, to any perſon or perſons who is, are, or ſhall become bankrupts, upon a good and valuable conſideration *bona fide*, for any ſum or ſums of money, or other matter or thing whatſoever, which is or ſhall not be due or payable at or before the time of ſuch perſon's becoming bankrupt, ſhall be admitted to prove his, her, and their ſeveral and reſpective bills, bonds, notes, or other ſecurities, promiſe, or agreements for the ſame, in like manner as if they were made payable preſently, and not at a future day; and ſhall be entitled unto, and ſhall have and receive a proportionable part, ſhare, and dividend of ſuch bankrupt's eſtate in proportion to the other creditors of ſuch bankrupts, deducting only thereout a rebate of intereſt, and diſcounting ſuch ſecurities payable at future times, after the rate of five pounds *per centum per annum* for what he ſhall ſo receive, to be computed from the actual payment thereof to the time of ſuch debt, duty, or ſum of money ſhould or would have become due and payable in and by ſuch ſecurities, as aforeſaid.

Perſons taking bills, bonds, &c. payable at a future day for goods delivered to ſuch as after become bankrupt, ſhall be admitted to prove their bills, &c. and be entitled to a proportionable part of the bankrupt's eſtate,

diſcounting ſuch ſecurities after the rate of 5*l. per cent.* for what they receive.

Sect. 2. "And be it further enacted by the authority aforeſaid, That all and every perſon or perſons, who now are or ſhall become bankrupts, ſhall be diſcharged of and from all and every ſuch bond, note, or other ſecurity, as aforeſaid, and ſhall have the benefit of the ſeveral ſtatutes now in force againſt bankrupts, in like manner, to all intents and purpoſes, as if ſuch ſum of money had been due and payable before the time of his becoming a bankrupt.

Bankrupts ſhall be diſcharged of ſuch ſecurities.

Sect. 3. "Provided always, and it is hereby declared, That no ſuch creditor ſhall be deemed or taken to be a ſufficient creditor, for or in reſpect of ſuch debt, to petition or join in any petition for the obtaining or ſuing forth any commiſſion of bankruptcy, until ſuch time as ſuch debt ſhall become actually due and payable." *This laſt ſection is repealed by* 5 Geo. 2. c. 30. ſ. 22.

No ſuch creditor ſhall join in ſuing forth a commiſſion, till ſuch debt become due.

Stat. 5 *Geo.* 2. *c.* 30. [*A. D.* 1732. *intituled*] "An act to prevent the committing of frauds by bankrupts." 5 Geo. 2. c. 30.

"Whereas commiſſions of bankrupt have been iſſued againſt ſeveral perſons not long before and ſince the expiration of the ſtatute made in the fifth year of his late majeſty's reign, intituled, *An act for the better preventing frauds committed by bankrupts*, and ſuch perſons have been declared bankrupts by the commiſſioners by ſuch commiſſions authorized, and yet ſeveral of ſuch bankrupts, by reaſon of the expiration of the ſaid ſtatute, have not only refuſed to ſurrender themſelves to the commiſſioners, and to diſcover and deliver up their eſtate and effects to the ſaid commiſſioners for the benefit of their creditors, but have carried away and concealed the ſame in ſuch manner, that the ſaid commiſſioners have not been able to ſeize the ſame, to the manifeſt wrong and injury of their creditors, and to the great diſcouragement of trade: And whereas many evil minded perſons have, ſince the expiration of the ſaid ſtatute, bought and taken upon truſt and credit divers great quantities of goods, wares, and merchandizes, and have thereby, and by their extravagant manner of living and otherwiſe contracted great debts, and having gotten ſuch goods and effects into their cuſtody, have ſold or pawned the ſame for leſs than the value thereof, and thereby raiſed ready money, and have withdrawn themſelves from their uſual places of abode, with their effects, into ſecret places, in order to oblige their creditors to accept of ſuch compoſition for their reſpective debts, as ſuch evil minded perſons think fit to offer, or have carried away their effects beyond the ſeas, whereby their creditors have been totally deprived of their debts: And whereas many perſons have and do daily become bankrupts, not ſo much by reaſon of loſſes and unavoidable misfortunes, as to the intent to oblige their creditors to accept ſuch their unjuſt profers and compoſition, and to defraud and hinder their creditors of their juſt debts: Therefore to remedy the ſaid abuſes, and to ſupply the defects and inconveniencies of former laws relating to bankrupts, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons, who ſince the fourteenth day of *May*, which was in the year of our Lord one thouſand ſeven hundred and twenty-nine, hath or have become bankrupt, or who ſhall at any time hereafter during the continuance of this act become bankrupt, within the intent and meaning of the ſeveral ſtatutes made and now in force concerning bankrupts, or any of them, and againſt whom a commiſſion of bankrupt under the great ſeal of *Great Britain* hath, ſince the ſaid fourteenth day of *May*, which was in the year of our Lord one thouſand ſeven hundred and twenty-nine, been awarded and iſſued out, or ſhall at any time hereafter be awarded and iſſued out; whereupon the perſon or perſons, againſt whom ſuch commiſſion hath iſſued or ſhall iſſue, hath or have been or ſhall be declared bankrupt or bankrupts, ſhall not within forty-two days after notice thereof in writing, to be left at the uſual place of abode of ſuch perſon or perſons, or perſonal notice, in caſe ſuch perſon or perſons be then in priſon, 5 Geo. 1. c. 24. Bankrupts ſince 14 May 1729. not ſurrendering within 42 days notice.

and notice given in the *London Gazette*, that ſuch commiſſion or commiſſions is, are, or have been iſſued, and of the time and place of a meeting of the commiſſioners therein named, or the major part of them, ſurrender him, her, or themſelves to the ſaid commiſſioners named in the ſaid commiſſion, or the major part of them, and ſign or ſubſcribe ſuch ſurrender, and ſubmit to be examined from time to time upon oath, or, being of the people called *Quakers*, upon the ſolemn affirmation by law appointed for ſuch people, by and before ſuch commiſſioners, or the major part of them, by ſuch commiſſion authorized, and in all things conform to the ſeveral ſtatutes already made and now in force concerning bankrupts; and alſo upon ſuch his, her, or their examination fully and truly diſcloſe and diſcover all his, her, or their effects and eſtate real and perſonal, and how and in what manner, to whom, and upon what conſideration, and at what time or times he, ſhe, or they have or hath diſpoſed of, aſſigned, or transferred any of his, her, or their goods, wares, merchandizes, monies, or other eſtate and effects (and all books, papers, and writings relating thereunto) of which he, ſhe, or they was or were poſſeſſed, or in or to which he, ſhe, or they was or were any ways intereſted or intitled, or which any perſon or perſons had, or hath, or have had in truſt for him, her, or them, or for his, her, or their uſe, at any time before or after the iſſuing of the ſaid commiſſion, or whereby ſuch perſon or perſons, or his, her, or their family or families, hath, or have, or may have or expect any profit, poſſibility of profit, benefit, or advantage whatſoever, except only ſuch part of his, her, or their eſtate and effects, as ſhall have been really and *bona fide* before ſold or diſpoſed of in the way of his, her, or their trade and dealings; and except ſuch ſums of money, as ſhall have been laid out in the ſame ordinary expence of his, her, or their family or families; and alſo, upon ſuch examination, deliver up unto the ſaid commiſſioners by the ſaid commiſſion authorized, or the major part of them, all ſuch part of his, her, or their the ſaid bankrupts goods, wares, merchandizes, money, eſtate, and effects, and all books, papers, and writings relating thereunto, as at the time of ſuch examination ſhall be in his, her, or their poſſeſſion, cuſtody, or power (his, her, or their neceſſary wearing apparel, and the neceſſary wearing apparel of the wife and children of ſuch bankrupt only excepted); then he, ſhe, or they the ſaid bankrupt or bankrupts, in caſe of any default and wilful omiſſion in not ſurrendering and ſubmitting to be examined as aforeſaid, or in caſe he, ſhe, or they ſhall remove, conceal, or embezil any part of ſuch his, her, or their eſtate, real or perſonal, to the value of twenty pounds, or any books of account, papers, or writings relating thereto, with an intent to defraud his, her, or their creditors (and being thereof lawfully convicted by judgment or information) ſhall be deemed and adjudged to be guilty of felony, and ſhall ſuffer as felons without benefit of clergy, or the benefit of any ſtatute made in relation to felons; and in ſuch caſes ſuch felon's goods and eſtate ſhall go and be divided among the creditors ſeeking relief under ſuch commiſſion, any law, uſage, or cuſtom to the contrary thereof in any wiſe notwithſtanding.

conforming to the ſtatutes,

or embeziling goods to the value of 20l. guilty of felony.

Goods of bankrupts condemned to go to the creditors.

Sect.

Sect. 2. " Provided always, and be it enacted by the authority aforeſaid, That the ſaid commiſſioners, authorized as aforeſaid, ſhall appoint within the ſaid forty-two days (ſo appointed, as aforeſaid) for the bankrupt to ſurrender and conform, as aforeſaid, not leſs than three ſeveral meetings, for the purpoſes aforeſaid, the laſt of which ſhall be on the forty-ſecond day hereby limited for ſuch bankrupt's appearance; except on commiſſions already iſſued ſince the ſaid fourteenth day of *May* one thouſand ſeven hundred and twenty-nine, where the perſon or perſons againſt whom ſuch commiſſion iſſued has or have before ſurrendred and ſubmitted to be examined: In which caſe the ſaid commiſſioners, authorized as aforeſaid, ſhall appoint only one ſitting more for the purpoſes aforeſaid, unleſs the aſſignee or aſſignees of the eſtate of ſuch bankrupt ſhall think more ſittings neceſſary, and deſire the ſame, and three weeks notice at leaſt ſhall be given in the *London Gazette* of the time and place of ſuch meetings. Number and limitation of ſittings.

Sect. 3. " Provided always, and it is hereby declared and enacted by the authority aforeſaid, That it ſhall and may be lawful to and for the lord chancellor, or lord keeper, or commiſſioners for the cuſtody of the great ſeal of *Great Britain* for the time being, to enlarge the time for ſuch perſon or perſons ſurrendering him, her, or themſelves, and diſcloſing and diſcovering his, her, or their eſtate and effects, as aforeſaid, as the ſaid lord chancellor, lord keeper, or ſuch commiſſioners ſhall think fit, not exceeding fifty days, to be computed from the end of the ſaid forty-two days, ſo as ſuch order for enlarging the time be made by the ſaid lord chancellor, lord keeper, or ſuch commiſſioners, ſix days at leaſt before the time, on which ſuch perſon or perſons was or were ſo to ſurrender him, her, or themſelves, and make ſuch diſcovery, as aforeſaid. Lord chancellor may enlarge the time for ſurrendering.

Sect. 4. " And be it further enacted by the authority aforeſaid, That every ſuch bankrupt or bankrupts, as aforeſaid, after any aſſignee or aſſignees of his, her, or their eſtate and effects ſhall be choſen and appointed, as herein after mentioned, ſhall be, and is, and are hereby required forthwith to deliver up upon oath, or (one of the people called *Quakers*) upon ſolemn affirmation before one of the maſters of the high court of *Chancery*, or before any juſtice of the peace within his reſpective juriſdiction, which oath or affirmation they are hereby impowered to adminiſter, unto ſuch aſſignee or aſſignees, all his, her, or their books of accounts, papers, and writings not ſeized by the meſſenger of the ſaid commiſſion, or not before delivered up to the commiſſioners, or the major part of them, and then in his, her, or their cuſtody or power, and diſcover ſuch as are in the cuſtody or power of any other perſon or perſons, that any ways relate to, or concern his, her, or their eſtate or effects; and all and every ſuch bankrupt or bankrupts, not in priſon or cuſtody, ſhall at all times after ſuch ſurrender, as aforeſaid, be at liberty, and is and are hereby required to attend ſuch aſſignee or aſſignees, upon every reaſonable notice in writing for that purpoſe given by ſuch aſſignee or aſſignees unto ſuch bankrupt or bankrupts, or left for him, her, or them, at his, her, or their houſe, or place of abode, in order to aſſiſt, and ſhall aſſiſt ſuch. Books of account to be delivered to the aſſignees on oath. Bankrupt to attend aſſignees,

ſuch aſſignee or aſſignees, in making out the accounts of the ſaid bankrupt's eſtate and effects.

Sect. 5. " And be it further enacted by the authority aforeſaid, That all and every bankrupt or bankrupts, having ſurrendered as aforeſaid, ſhall, at all ſeaſonable times, before the expiration of the ſaid forty-two days, or ſuch further time as ſhall be allowed to ſuch bankrupts to finiſh his, her, or their examination, be at liberty to inſpect his, her, or their books, papers, and writings, in the preſence of ſuch aſſignee or aſſignees, or ſome perſon to be appointed by ſuch aſſignee or aſſignees for that purpoſe, and to take and bring with him, her, or them, for his, her, or their aſſiſtance, ſuch perſons as he, ſhe, or they ſhall think fit, not exceeding two perſons at any one time, and to make out ſuch extracts and copies from thence, as he, ſhe, or they ſhall think fit, the better to enable him, her, and them, to make a full and true diſcovery and diſcloſure of his, her, or their eſtate and effects; and in order thereto the ſaid bankrupt or bankrupts ſhall be free from all arreſts, reſtraint, or impriſonment of any of his, her, or their creditors in coming to ſurrender, and from the actual ſurrender of ſuch bankrupt to the ſaid commiſſioners, for and during the ſaid forty-two days, or ſuch further time, as ſhall be allowed to ſuch bankrupt or bankrupts, for finiſhing his, her, or their examinations as aforeſaid, provided ſuch bankrupt was not in cuſtody at the time of ſuch ſurrender and ſubmiſſion to be examined; and in caſe ſuch bankrupt ſhall be arreſted for debt, or on any eſcape warrant, coming to ſurrender him or herſelf to the ſaid commiſſioners, or, after his or her ſurrender, ſhall be ſo arreſted within the time before mentioned, that then, on producing ſuch ſummons or notice, under the hands of the ſaid commiſſioners, aſſignee or aſſignees, to the officer who ſhall arreſt him, her, or them, and making it appear to ſuch officer, that ſuch notice or ſummons is ſigned by the ſaid commiſſioners, or the major part of them, or ſuch aſſignee or aſſignees, and giving ſuch officer a copy thereof, ſhall be immediately diſcharged. And in caſe any officer ſhall detain ſuch bankrupt or bankrupts (after he, ſhe, or they ſhall have ſhewn ſuch notice or ſummons to him, and made it appear it was ſigned as aforeſaid) in his cuſtody, ſuch officer ſhall forfeit and pay to ſuch bankrupt, for his own uſe, the ſum of five pounds for every day ſuch officer ſhall detain ſuch bankrupt, to be recovered by action of debt, in any of his majeſty's courts of record at *Weſtminſter*, in the name or names of ſuch bankrupt or bankrupts, with full coſts of ſuit.

inſpect accounts,

and be free from reſtraint during examination, if not in cuſtody before.

Penalty on officer detaining bankrupts from attending aſſignees.

Sect. 6. " Provided always, and be it further enacted, That in caſe any bankrupt be in priſon, or in cuſtody, at the time of iſſuing of the ſaid commiſſion, as aforeſaid, and is willing to ſurrender and ſubmit to be examined according to the directions of this act, and can be brought before the ſaid commiſſioners and creditors for that purpoſe, the expence thereof ſhall be paid out of the ſaid bankrupt's eſtate and effects: But in caſe ſuch bankrupt is in execution, or cannot be brought before the commiſſioners, that then the acting commiſſioners ſhall from time to time attend the ſaid bankrupt in priſon or cuſtody, and take his or her diſcovery, as in other caſes;

Bankrupts in cuſtody to be brought before commiſſioners at the creditors expence; if in execution, commiſſioners to attend them in priſon.

caſes; and the aſſignees of the ſaid eſtate ſhall have power, and are hereby required to appoint one or more perſons to attend ſuch bankrupt being in priſon or in cuſtody, as aforeſaid, from time to time, and to produce to him or her, his or her books, papers, and writtings, in order to prepare his or her laſt diſcovery and examination, according to the directions before mentioned; a copy whereof the aſſignees of the ſaid eſtate ſhall apply for, and the ſaid bankrupt ſhall deliver to them or their order, ten days at leaſt before ſuch laſt examination.

Allowance to bankrupts.

Sect. 7. "And be it further enacted by the authority aforeſaid, That all and every perſon and perſons ſo become or to become bankrupts, as aforeſaid, who ſhall within the time limited by this act ſurrender him, her, or themſelves to the acting commiſſioners named and authorized in or by any commiſſion of bankrupt awarded or to be awarded againſt him, her, or them, and in all things conform, as in and by this act is directed, ſhall be allowed the ſum of five pounds *per centum* out of the neat produce of all the eſtate that ſhall be recovered in and received; which ſhall be paid unto him, her, or them, by the aſſignee or aſſignees, of the ſaid commiſſioners, in caſe the neat produce of the ſaid eſtate, after ſuch allowance made, ſhall be ſufficient to pay the creditors of the ſaid bankrupt, who have proved their debts under the ſaid commiſſion, the ſum of ten ſhillings in the pound, and ſo as the ſaid five pounds *per centum* ſhall not amount in the whole to above the ſum of two hundred pounds. And in caſe the neat produce of the ſaid eſtate ſhall, over and above the allowance hereafter mentioned, be ſufficient to pay the ſaid creditors the ſum of twelve ſhillings and ſix pence in the pound for their reſpective debts, that then all and every perſon or perſons, ſo conforming, ſhall be allowed the ſum of ſeven pounds ten ſhillings *per centum* out of ſuch neat produce, to be paid by the aſſignee or aſſignees, ſo as ſuch ſeven pounds ten ſhillings *per centum* ſhall not amount in the whole to above the ſum of two hundred and fifty pounds. And in caſe the neat produce of the ſaid eſtate ſhall, over and above the allowance hereafter made, be ſufficient to pay the ſaid creditors the ſum of fifteen ſhillings in the pound for their reſpective debts, that then all and every ſuch perſon and perſons, ſo conforming, ſhall be allowed the ſum of ten pounds *per centum* out of ſuch neat produce, to be paid by the aſſignee, or aſſignees, ſo as ſuch ten pounds *per centum* ſhall not amount in the whole to above the ſum of three hundred pounds; and every ſuch bankrupt ſhall be diſcharged from all debts by him, her, or them due or owing at the time, that he, ſhe, or they did become bankrupt. And in caſe any ſuch bankrupt ſhall afterwards be arreſted, proſecuted, or impleaded for any debt due before ſuch time as he, ſhe, or they became bankrupt, ſuch bankrupt ſhall be diſcharged upon common bail, and ſhall and may plead in general, that the cauſe of ſuch action or ſuit did accrue before ſuch time as he, ſhe, or they became bankrupts, and may give this act and the ſpecial matter *in* evidence; and the certificate of ſuch bankrupt's conforming, and the allowance thereof according to the directions of this act, ſhall be and ſhall be allowed to be ſufficient evidence of the trading, bankruptcy, commiſſion, and other proceedings precedent to the obtaining ſuch certificate

Bankrupts diſcharged freed from future arreſts.

cate, and a verdict ſhall thereupon paſs for the defendant, unleſs the plaintiff in ſuch action can prove the ſaid certificate was obtained unfairly and by fraud, or unleſs the plaintiff in ſuch action can make appear any concealment by ſuch bankrupt to the value of ten pounds; and if a verdict paſs for the defendant, or the plaintiff ſhall become nonſuited, or judgment be given againſt the plaintiff, the defendant ſhall recover his full coſts.

Bankrupts allowance if the effects amount not to 10s. per. pound.

Sect. 8. "Provided always, and it is hereby declared and enacted by the authority aforeſaid, That if the neat proceed of ſuch bankrupt's eſtate ſo to be diſcovered, recovered, and received, together with what ſhall be otherwiſe recovered and received, ſhall not amount to ſo much as will pay all and every the creditors of ſuch bankrupt, who ſhall have proved their debts under the ſaid commiſſion, the ſum of ten ſhillings in the pound for their reſpective debts, after all charges firſt had and deducted, that then and in ſuch caſe ſuch bankrupt ſhall not be allowed the ſum of five pounds *per centum* out of ſuch eſtate, as ſhall be ſo recovered in; but ſhall be allowed and paid by the aſſignees ſo much money, as the ſaid aſſignees and commiſſioners authorized, as aforeſaid, ſhall think fit to allow to ſuch bankrupt not exceeding three pounds *per centum*.

In what caſes future effects of bankrupts ſtill liable to creditors.

Sect. 9. "Provided always, and be it further enacted by the authority aforeſaid, That from and after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-two, in caſe any commiſſion of bankruptcy ſhall iſſue againſt any perſon or perſons, who, after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and thirty-two, ſhall have been diſcharged by virtue of this act, or ſhall have compounded with his, her, or their creditors, or delivered to them his, her, or their eſtate or effects, and been releaſed by them, or been diſcharged by any act for the relief of inſolvent debtors after the time aforeſaid, that then and in either of thoſe caſes the body and bodies only of ſuch perſon and perſons conforming as aforeſaid, ſhall be free from arreſt and impriſonment by virtue of this act; but the future eſtate and effects of every ſuch perſon and perſons ſhall remain liable to his, her, or their creditors, as before the making of this act (the tools of trade, the neceſſary houſhold goods and furniture, and neceſſary wearing apparel of ſuch bankrupt, and his wife, and children only excepted) unleſs the eſtate of ſuch perſon or perſons, againſt whom ſuch commiſſion ſhall be awarded, ſhall produce clear, after all charges, ſufficient to pay every creditor under the ſaid commiſſion, fifteen ſhillings in the pound for their reſpective debts.

On what conditions certificates to be ſigned.

Sect. 10. "Provided alſo, and be it enacted by the authority aforeſaid, That no diſcovery upon oath, or ſolemn affirmation, to be made by any bankrupt or bankrupts of his, her, or their eſtate and effects, purſuant to this act, ſhall intitle ſuch bankrupt or bankrupts to the benefits allowed by this act, unleſs the commiſſioners authorized by ſuch commiſſion, or the major part of them, ſhall in writing under their hands and ſeals certify to the lord chancellor, or lord keeper, or commiſſioners for the cuſtody of the great ſeal of *Great Britain* for the time being, that ſuch bankrupt or bankrupts hath or have made a full diſcovery of his, her, or their eſtate and effects, and in all things conformed himſelf, herſelf, or themſelves, according

to the directions of this act; and that there doth not appear to them any reaſon to doubt of the truth of ſuch diſcovery, or that the ſame is not a full diſcovery of all ſuch bankrupt's eſtate and effects; and unleſs four parts in five in number and value of the creditors of ſuch bankrupt or bankrupts, who ſhall be creditors for not leſs than twenty pounds reſpectively, and who ſhall have duly proved their debts under ſuch commiſſion, or ſome other perſon by them reſpectively duly authorized thereunto, ſhall ſign ſuch certificate, and teſtify their conſent to ſuch allowance and certificate, and to the ſaid bankrupt's diſcharge in purſuance of this act, to be alſo certified by ſuch commiſſioners; but the ſaid commiſſioners ſhall not certify the ſame till they ſhall have proof by affidavit or affirmation in writing of ſuch creditors, or of the perſon by them reſpectively authorized for that purpoſe, ſigning the ſaid certificate, and of the power and authority, by which any perſon ſhall be authorized by any creditor to aſſign ſuch certificate for any creditor; which affidavit or affirmation, together with ſuch warrant or authority to ſign, ſhall be laid before the lord high chancellor, lord keeper, or commiſſioners of the great ſeal, with the ſaid certificate, in order for the allowing and confirming the ſame: and unleſs ſuch bankrupt make oath, or being of the people called *Quakers*, ſolemnly affirm in writing, that ſuch certificate and conſent of the creditors thereunto were obtained fairly, and without fraud; and unleſs ſuch certificate ſhall, after ſuch oath or affirmation of the bankrupt, be allowed and confirmed by the lord chancellor, lord keeper, or commiſſioners for the cuſtody of the great ſeal of *Great Britain* for the time being, or by ſuch two of the juſtices of the *courts* of *King's Bench*, *Common Pleas*, or barons of the court of *Exchequer* at *Weſtminſter*, to whom the conſideration of ſuch certificate ſhall be referred by the lord chancellor, lord keeper, or commiſſioners of the great ſeal for the time being; and any of the creditors of ſuch bankrupt are to be allowed to be heard, if they ſhall think fit, before the reſpective perſons aforeſaid, againſt the making ſuch certificate, and againſt the confirmation thereof; nor ſhall any commiſſioner ſign ſuch certificate till after four parts in five in number and value of the ſaid creditors ſhall have ſigned the ſame, as aforeſaid.

Contracts to induce creditors to ſign certificates, void.

Sect. 11. "And be it enacted by the authority aforeſaid, That every bond, bill, note, contract, agreement, or other ſecurity whatſoever, to be made or given by any bankrupt, or by any other perſon, unto or to the uſe of or in truſt for any creditor or creditors, or for the ſecurity of the payment of any debt or ſum of money due from ſuch bankrupt at the time of his becoming bankrupt, or any part thereof, between the time of his becoming bankrupt, and ſuch bankrupt's diſcharge, as a conſideration, or to the intent to perſuade him, her or them, to conſent to, or ſign any ſuch allowance or certificate, ſhall be wholly void and of no effect; and the moneys thereby ſecured or agreed to be paid, ſhall not be recovered or recoverable; and the party ſued on ſuch bond, bill, note, contract or agreement, ſhall and may plead the general iſſue, and give this act and the ſpecial matter in evidence; any thing therein contained, or any law, cuſtom, or uſage, to the contrary notwithſtanding.

Perſons excepted from the benefits of this act.

Sect. 12. "Provided always, and be it enacted by the authority aforeſaid, That nothing in this act ſhall be conſtrued to extend, or give, or grant any privilege, benefit or advantage, to any bankrupt whatſoever, againſt whom a commiſſion of bankrupt under the great ſeal of *Great Britain*, ſince the ſaid fourteenth day of *May*, which was in the year of our lord one thouſand ſeven hundred and twenty nine, hath iſſued, or hereafter ſhall iſſue, who hath, or ſhall, for or upon marriage of any of his or her children, have given, advanced, or paid above the value of one hundred pounds, unleſs he or ſhe ſhall prove, or by his or her books fairly kept, or otherwiſe upon his or her oath, or being of the people called *Quakers*, upon ſolemn affirmation before the major part of the commiſſioners in ſuch commiſſion named and authorized, that he or ſhe had, at the time thereof, over and above the value ſo given, advanced, or paid, remaining in goods, wares, debts, ready money, or other eſtate real or perſonal, ſufficient to pay and ſatisfy unto each and every perſon, to whom he or ſhe was any ways indebted, their full and entire debts; or who hath or ſhall have loſt in any one day the ſum or value of five pounds, or in the whole the ſum or value of one hundred pounds within the ſpace of twelve months next preceding his, her or their becoming bankrupt, in playing at or with cards, dice, tables, tennis, bowls, billiards, ſhovelboard, or in or by cock-fighting, horſe-races, dog-matches, or foot-races, or other paſtimes, game, or games whatſoever, or in or by bearing a ſhare or part in the ſtakes, wagers, or adventurers, or in or by betting on the ſides or hands of ſuch as do or ſhall play, act, ride, or run, as aforeſaid; or that within one year before he or ſhe became bankrupt, ſhall have loſt the ſum of one hundred pounds, by one or more contracts for the purchaſe, ſale, refuſal, or delivery of any ſtock of any company or corporation whatſoever, or any parts or ſhares of any government or publick funds or ſecurities, where every ſuch contract was not to be performed within one week from the time of the making ſuch contract, or where the ſtock or other thing ſo bought or ſold was not actually transferred or delivered in purſuance of ſuch contract.

Bankrupts impriſoned after certificate allowed, how to be diſcharged.

Sect. 13. "And be it further enacted by the authority aforeſaid, That if any bankrupt, who ſhall have obtained his or her certificate from the acting commiſſioners, and ſuch certificate ſhall have been allowed and confirmed as by this act is directed, ſhall be taken in execution, or detained in priſon on account of any debts due or owing before he or ſhe became bankrupt, by reaſon that judgment was obtained before ſuch certificate was allowed and confirmed, it ſhall and may be lawful for any one or more of the judges of the court, wherein judgment has been ſo obtained againſt ſuch bankrupt, on ſuch bankrupt's producing his or her certificate allowed and confirmed, to order any ſheriff or ſheriffs, bailiff or officer, gaoler, or keeper of any priſon, who hath or ſhall have any ſuch bankrupt in his cuſtody, by virtue of any ſuch execution, to diſcharge ſuch bankrupt out of cuſtody on ſuch execution without payment of any fee or reward; and ſuch ſheriff or ſheriffs, bailiff or officer, gaoler or keeper is and are hereby required to diſcharge ſuch bankrupt out of cuſtody accordingly, and is and are

are hereby indemnified from any action for an eſcape for his or their ſo doing.

Sect. 14. " And be it further enacted by the authority aforeſaid, That upon certificate made under the hands and ſeals of the commiſſioners by ſuch commiſſion authorized, or to be authorized or the major part of them, that ſuch commiſſion is iſſued, and ſuch perſon or perſons proved before them to become bankrupt or bankrupts, it ſhall and may be lawful to and for all or any of the juſtices of his majeſty's courts of *King's Bench*, or *Common Pleas*, or barons of the court of *Exchequer*, and to and for all and every the juſtices of the peace within that part of the kingdom of *Great Britain* called *England*, the dominion of *Wales*, and town of *Berwick* upon *Tweed*, and they are hereby impowered and required, upon application to them for that purpoſe made, to grant his or their warrant or warrants under his or their hands and ſeals for the taking and apprehending ſuch perſon or perſons, and him, her, or them to commit to the common gaol of the county where he, ſhe, or they ſhall be ſo apprehended and taken, there to remain until he, ſhe, or they be removed by order of the ſaid commiſſioners, or the major part of them, by warrant under their hands and ſeals; and the gaoler or keeper, to whoſe cuſtody ſuch perſon or perſons ſhall be committed, is hereby required to take and receive ſuch perſon or perſons into his cuſtody, and forthwith to give notice to one or more of the ſaid commiſſioners in the ſaid commiſſion named, of ſuch perſon or perſons being in his or their cuſtody, to the intent the ſaid commiſſioners may ſend their warrant to ſuch gaoler or keeper (which they are hereby impowered and required forthwith to ſend) for the delivering ſuch bankrupt or bankrupts to the perſon or perſons named in ſuch warrant, who ſhall be thereby authorized to convey and bring ſuch perſon or perſons to the ſaid commiſſioners, in order to ſuch examination and diſcovery as aforeſaid; and the ſaid commiſſioners are hereby likewiſe authorized and impowered by ſuch their warrant, or any other warrant, to take and ſeize any of the goods, wares, merchandizes, and effects of ſuch bankrupt or bankrupts (the neceſſary wearing apparel of ſuch bankrupt, or of his wife or children, only excepted), and any of his, her, or their books, papers, or writings, which ſhall be then in the cuſtody or poſſeſſion of ſuch bankrupt or bankrupts, or of any other perſon or perſons, in any priſon or priſons whatſoever, any cuſtom or uſage to the contrary in any wiſe notwithſtanding.

Judges or juſtices may grant warrants to apprehend bankrupts not conforming.

Gaolers to give notice to commiſſioners.

Goods or books to be ſeized in priſons.

Sect. 15. " Provided always, and be it enacted by the authority aforeſaid, That if any ſuch perſon or perſons ſo apprehended and taken, ſhall, within the time or times allowed by this act for that purpoſe, ſubmit to be examined, and in all things conform, as if he, ſhe or they had ſurrendered, as by this act ſuch bankrupt or bankrupts is or are required, that then ſuch perſon ſo ſubmitting and conforming ſhall have and receive the benefit of this act, to all intents and purpoſes, as if he, ſhe or they had voluntarily come in and ſurrendred himſelf, herſelf or themſelves; any thing herein contained to the contrary thereof in any wiſe notwithſtanding.

Bankrupts ſo apprehended, on conformity, to have the benefit of the act.

Sect. 16. " And be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for the ſaid commiſſioners, or the major part of them, to examine as well by word of mouth, as on interrogatories in writing, all and every perſon and perſons, againſt whom any commiſſion of bankrupt is or ſhall be awarded, touching all matters relating to the trade, dealings, eſtate, and effects of all and every ſuch bankrupt and bankrupts, and alſo to examine in the manner aforeſaid all and every other perſon duly ſummoned before, or preſent at any meeting of the ſaid commiſſioners, or the major part of them, touching all matters relating to the perſon, trade, dealings, eſtate and effects of all and every ſuch bankrupt and bankrupts, and any act or acts of bankruptcy committed by him, her, or them, and alſo to take down or reduce into writing the anſwers of verbal examinations of every ſuch bankrupt, or other perſon, had or taken before them as aforeſaid; which examination, ſo taken down or reduced into writing, the party examined ſhall and is hereby required to ſign and ſubſcribe: And in caſe any ſuch bankrupt or bankrupts, or other perſon or perſons, ſhall refuſe to anſwer, or ſhall not fully anſwer to the ſatisfaction of the commiſſioners, or the major part of them, all lawful queſtions put to him, her or them, by the ſaid commiſſioners, or the major part of them, as well by word of mouth, as by interogatories in writing, or ſhall refuſe to ſign and ſubſcribe his, her or their examination ſo taken down or reduced into writing as aforeſaid (not having a reaſonable objection either to the wording thereof, or otherwiſe, to be allowed by the ſaid commiſſioners) it ſhall and may be lawful to and for the ſaid commiſſioners, or the major part of them, by warrant under their hands and ſeals, to commit him, her or them to ſuch priſon, as the ſaid commiſſioners, or the major part of them, ſhall think fit, there to remain without bail or mainprize, until ſuch time as ſuch perſon or perſons ſhall ſubmit him, her or themſelves to the ſaid commiſſioners, and full anſwer make to the ſatisfaction of the ſaid commiſſioners to all ſuch queſtions, as ſhall be put to him, her or them, as aforeſaid, and ſign and ſubſcribe ſuch examination, as aforeſaid, according to the true intent and meaning of this act.

Perſons not anſwering interrogatories of commiſſioners to be impriſoned;

Sect. 17. " Provided always, that in caſe any perſon or perſons ſhall be committed by the ſaid commiſſioners for refuſing to anſwer, or not fully anſwering any queſtion or queſtions put to him, her or them, by the ſaid commiſſioners by word of mouth, or on interrogatories, that the ſaid commiſſioners ſhall, in their warrant of commitment, ſpecify ſuch queſtion or queſtions.

to be particularly ſpecified in the warrant.

Sect. 18. " Provided alſo, that in caſe any perſon or perſons committed by the commiſſioners warrant, by virtue of this or any other acts now in force concerning bankrupts, ſhall bring any *habeas corpus* in order to be diſcharged from any ſuch commitment, and on the return of any ſuch *habeas corpus*, there ſhall appear any ſuch inſufficiency whatſoever in the form of the warrant, whereby ſuch perſon was committed, by reaſon whereof the party might be diſcharged of ſuch commitment; that then it ſhall and may be lawful for the court or judge, before whom ſuch party ſhall be ſo brought by *habeas corpus*, as aforeſaid, and ſuch court or judge ſhall

If *habeas corpus* be brought on ſuch commitment,

ſhall, and is hereby required, by rule, order or warrant, to commit ſuch perſon or perſons to the ſame priſon, there to remain as aforeſaid, until he, ſhe or they ſhall conform as aforeſaid, unleſs it ſhall be made appear to ſuch court or judge by the party committed, that he, ſhe or they have fully anſwered all lawful queſtions put to him, her or them by the ſaid commiſſioners; or in caſe ſuch perſon was committed for not ſigning his, her or their examination, unleſs it ſhall appear to ſuch court or judge, that the party ſo committed had a good and ſufficient reaſon for refuſing to ſign the ſame. And in caſe any gaoler or keeper of any priſon, to whom any ſuch bankrupt or bankrupts, perſon or perſons ſhall be ſo committed as aforeſaid, ſhall wilfully ſuffer ſuch bankrupt or bankrupts, perſon or perſons, to eſcape from ſuch priſon, or to go without the walls or doors of the ſaid priſon, until he, ſhe or they ſhall be duly diſcharged, as aforeſaid, ſuch gaoler or keeper ſhall for ſuch his offence, being duly convicted by indictment or information, forfeit five hundred pounds of lawful money of *Great Britain* for the uſe of the creditors of ſuch bankrupt or bankrupts.

the judge may recommit the priſoner.

Penalty on gaoler for eſcape 500l.

Sect. 19. " And be it further enacted, That the gaoler or keeper of ſuch priſon, as aforeſaid, ſhall, upon requeſt of any perſon or perſons, being a creditor or creditors of ſuch bankrupt, and having proved his, her or their debt, under the ſaid commiſſion, and producing a certificate thereof under the hands of the ſaid commiſſioners, or the major part of them (which ſuch commiſſioners are hereby required to give *gratis*) forthwith produce and ſhew ſuch perſon or perſons ſo committed as aforeſaid to any ſuch creditor or creditors requeſting the ſame. And in caſe ſuch gaoler or keeper of ſuch priſon ſhall refuſe to ſhew, or ſhall not forthwith produce ſuch perſon or perſons ſo committed as aforeſaid, and being in his actual cuſtody at the time of ſuch requeſt, to ſuch creditor or creditors of ſuch bankrupt, requeſting to ſee ſuch perſon or perſons committed as aforeſaid, ſuch gaoler and keeper of ſuch priſon ſhall forfeit for ſuch his wilful refuſal or neglect the ſum of one hundred pounds of lawful money of *Great Britain*, for the uſe of the creditors of ſuch bankrupt or bankrupts, to be recovered by action of debt in any of his majeſty's courts of record at *Weſtminſter*, in the name or names of the creditor or creditors requeſting ſuch ſight of ſuch priſoner.

Penalty on gaoler refuſing to produce his priſoner.

Sect. 20. " And be it further enacted by the authority aforeſaid, That all and every perſon and perſons, who ſhall, at any time after the time allowed to ſuch bankrupt to ſurrender and conform, as aforeſaid, voluntarily come and make diſcovery of any part of ſuch bankrupt's eſtate not before come to the knowledge of the aſſignees, either to the ſaid aſſignees, or to the ſaid commiſſioners authorized as aforeſaid, or the major part of them, ſhall be allowed five pounds *per centum*, and ſuch further and other reward as the aſſignees and the major part of the creditors in value preſent at any meeting of the creditors ſhall think fit, to be paid out of the neat proceed of ſuch bankrupt's eſtate, which ſhall be recovered on ſuch diſcovery, which ſhall be paid to the perſon or perſons ſo diſcovering the ſame, by the aſſignee or aſſignees of ſuch bankrupt's eſtate; and the aſſignee or aſſignees ſhall be allowed the ſame in their accounts.

Allowance to perſons making diſcovery of bankrupts eſtate.

Sect.

Penalty on perſons concealing effects in truſt.

Sect. 21. " And for the better diſcovery of the eſtate of a bankrupt, be it enacted by the authority aforeſaid, That all and every perſon and perſons, who ſhall have accepted of any truſt or truſts, and ſhall wilfully conceal or protect any eſtate, real or perſonal, of any perſon or perſons becoming bankrupt, as aforeſaid, from his, her or their creditors, and ſhall not within forty-two days next after ſuch commiſſion ſhall iſſue forth, and notice thereof be given in the *London Gazette*, diſcover and diſcloſe ſuch truſt and eſtate in writing to one or more of the commiſſioners or aſſignees of ſuch bankrupt or bankrupts eſtate, and likewiſe ſubmit him or herſelf to be examined by the commiſſioners, in and by the ſaid commiſſion authorized, or the major part of them, if thereunto required, and truly diſcover the ſame, ſhall forfeit the ſum of one hundred pounds of lawful money of *Great Britain*, and double the value of the eſtate either real or perſonal ſo concealed, to and for the uſe and benefit of the ſaid creditors, to be recovered by action of debt in any of his majeſty's courts of record at *Weſtminſter*, in the name of the aſſignee or aſſignees of the ſaid commiſſioners, in which caſe full coſts ſhall be allowed to either party.

7 Geo. 1. c. 31.

Sect. 22. " And whereas by an act made in the ſeventh year of his late majeſty's reign, intituled, *An act for the explaining and making more effectual the ſeveral acts concerning bankrupts*, perſons taking bills, bonds, promiſſory notes, or other perſonal ſecurity for their money payable at a future day, are enabled to prove their debts under a commiſſion of bankruptcy, but not to petition for or join in petitioning for any new commiſſion, which having been found to be inconvenient: Now it is hereby enacted by the authority aforeſaid, That ſo much of the ſaid act, as diſables any ſuch perſon from petitioning for, or joining in any petition for a commiſſion againſt any perſon or perſons, who have before committed any act of bankruptcy, is hereby repealed: And it ſhall and may be lawful hereafter for ſuch perſon to petition for, or join in petitioning for any ſuch commiſſion of bankruptcy; any thing in the ſaid act contained to the contrary thereof in any wiſe notwithſtanding.

Perſons having bonds or notes may join in petitioning for commiſſions.

Conditions of granting commiſſions.

Sect. 23. " And for preventing the taking out commiſſions of bankrupts maliciouſly, be it enacted by the authority aforeſaid, That no commiſſion of bankrupt under the great ſeal of *Great Britain* ſhall, after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-two, be awarded and iſſued out againſt any perſon whatſoever, upon the petition of one or more creditors, unleſs the ſingle debt of the creditor, or of two or more perſons being partners petitioning for the ſame, do amount to the ſum of one hundred pounds, or upwards, or unleſs the debt of two creditors, ſo petitioning as aforeſaid, ſhall amount to one hundred and fifty pounds, or upwards, or unleſs the debt of three or more creditors, ſo petitioning as aforeſaid, ſhall amount to two hundred pounds, or upwards, and the creditor or creditors petitioning for ſuch commiſſion ſhall, before the ſame ſhall be granted, make an affidavit, or (being one of the people called *Quakers*) make a ſolemn affirmation in writing before one of the maſters of the high court of *Chancery* (which oath

oath or affirmation they are hereby impowered to adminiſter, and which ſhall be filed with the proper officer) of the truth and reality of ſuch his, her and their reſpective debt and debts, likewiſe give bond to the lord chancellor, lord keeper, or commiſſioners of the great ſeal for the time being, in the penalty of two hundred pounds, to be conditioned for proving his, her or their debts, as well before the commiſſioners named in ſuch commiſſion, as upon a trial at law, in caſe the due iſſuing forth of the ſame ſhall be conteſted and tried, and alſo for proving the party a bankrupt at the time of taking out ſuch commiſſion, and further to proceed on ſuch commiſſion, as herein after is mentioned; and if ſuch debt or debts ſhall not be really due or owing, or if after ſuch commiſſion taken out it cannot be proved that the party was a bankrupt at the time of the iſſuing of the ſaid commiſſion, but on the contrary it ſhall appear that ſuch commiſſion was taken out fraudulently or maliciouſly, that then the lord chancellor, lord keeper, or commiſſioners of the great ſeal for the time being, ſhall and may, upon petition of the party or parties grieved, examine into the ſame, and order ſatisfaction to be made to him, her or them, for the damages by him, her or them ſuſtained; and for the better recovery thereof may, in caſe there be occaſion, aſſign ſuch bond or bonds to the party or parties ſo petitioning, who may ſue for the ſame in his, her and their name and names; any law, cuſtom, or uſage to the contrary notwithſtanding.

Sect. 24. "And whereas commiſſions of bankrupts are frequently taken out by perſons, who by means of ſuch commiſſions (on a compoſition propoſed by the bankrupts) and on promiſe not to execute the ſame, prevail with and extort from the bankrupts their whole debts, or much greater part thereof than ſuch bankrupts pay to their creditors, or otherwiſe get from ſuch bankrupts goods, or other real or perſonal ſecurity, which is contrary to the true intent and meaning of the ſeveral ſtatutes made concerning bankrupts, which ſaid ſtatutes intend, that all ſuch bankrupts creditors ſhall be on an equal foot, and not one preferred before or paid more than another in reſpect of his or her debt: Be it therefore enacted by the authority aforeſaid, That if any bankrupt or bankrupts ſhall, after iſſuing of any commiſſion againſt him, her, or them, pay to the perſon or perſons who ſued out the ſame, or otherwiſe give or deliver to ſuch perſon or perſons, goods, or any other ſatisfaction or ſecurity for his, her, or their debt, whereby ſuch perſon or perſons ſuing out ſuch commiſſion ſhall privately have and receive more in the pound, in reſpect of his, her or their debt, than the other creditors, ſuch payment of money, delivery of goods, or giving greater or other ſecurity or ſatisfaction, ſhall be deemed and taken to be ſuch an act of bankruptcy, whereby on good proof thereof ſuch commiſſion ſhall and may be ſuperſeded: And it ſhall be lawful for the lord chancellor, lord keeper, or commiſſioners for the cuſtody of the great ſeal of *Great Britain* for the time being, to award to any creditor or creditors petitioning another commiſſion; and ſuch perſon or perſons, ſo taking or receiving ſuch goods or other ſatisfaction as aforeſaid, ſhall forfeit and loſe as well his, her, or their whole debt, as the whole he, ſhe or

Commiſſions fraudulently obtained to be ſuperſeded,

and another granted.

Penalty.

or they ſhall have taken or received, and ſhall pay back and deliver up the ſame, or the full value thereof, to ſuch perſon or perſons as the ſaid commiſſioners acting under ſuch new commiſſion ſhall appoint, in truſt for, and to be divided amongſt the other of the bankrupt's creditors in proportion to their reſpective debts.

The charge of commiſſions to be paid by the aſſignees.

Sect. 25. " And be it further enacted by the authority aforeſaid, That the creditor or creditors, who ſhall petition for, and obtain any commiſſion of bankrupt, ſhall be and is and are hereby obliged, at his, her or their own coſts and expences, to ſue forth and proſecute the ſame, until an aſſignee or aſſignees ſhall be choſen of ſuch bankrupt's eſtate and effects; and the commiſſioners to be named in any ſuch commiſſion ſhall, at the ſame meeting which ſhall be appointed for the choice of the aſſignees, aſcertain ſuch coſts, and by writing under their hands ſhall direct and order the aſſignee or aſſignees of ſuch bankrupt's eſtate, who is and are hereby required to pay and reimburſe ſuch petitioning creditor or creditors ſuch his, her or their coſts and charges as aforeſaid, out of the firſt monies or effects of the ſaid bankrupt, that ſhall be got in and received under the ſaid commiſſion: and every creditor of the ſaid bankrupt ſhall be at liberty to prove his, her or their debt or debts under the ſaid commiſſion, without paying any contribution or ſum of money whatſoever for or on account of ſuch debt or debts; any law or ſtatute to the contrary notwithſtanding.

Creditors may prove debts without paying contribution.

Notice of meeting to be given in the Gazette.

Sect. 26. " And be it further enacted by the authority aforeſaid, That where any commiſſion of bankrupt ſhall iſſue out from and after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-two, the commiſſioners therein named, or the major part of them thereby authorized, ſhall forthwith, after they have declared the perſon or perſons, againſt whom ſuch commiſſion ſhall iſſue, a bankrupt or bankrupts, cauſe notice thereof to be given in the *London Gazette*, and ſhall appoint a time and place for the creditors to meet, which meeting for the city of *London*, and all places within the bills of mortality, ſhall be at the *Guildhall* of the ſaid city, in order to chooſe an aſſignee or aſſignees of the ſaid bankrupt's eſtate and effects; at which meeting the ſaid commiſſioners ſhall admit the proof of any creditor's debt, that ſhall live remote from the place of ſuch meeting of the commiſſioners, by affidavit, or, being of the people called *Quakers*, by ſolemn affirmation, and alſo permit any perſon duly authorized by letter of attorney from ſuch creditors, oath or affirmation being made of the due execution thereof, either by an affidavit ſworn, or affirmation made before a maſter in *Chancery*, ordinary or extraordinary, or before the commiſſioners *viva voce* (which oath or affirmation they are hereby reſpectively authorized to adminiſter) and in caſe of creditors reſiding in foreign parts, ſuch affidavits or ſolemn affirmations to be made before a magiſtrate, where the party ſhall be reſiding, and ſhall together with ſuch creditor's letters of attorney be atteſted by a notary publick, to vote in the choice of an aſſignee or aſſignees of ſuch bankrupt's eſtate and effects in the place and ſtead of ſuch creditor; and the commiſſioners, or the major part of them authorized, ſhall aſſign every ſuch bankrupt's eſtate and effects unto ſuch perſon or perſons, as the major part in value of ſuch creditors, ac-

Debts how to be proved.

Choice of aſſignees.

cording to the ſeveral debts then proved, ſhall chooſe as aforeſaid; and the aſsignee or aſsignees ſo choſen ſhall be obliged to keep one or more diſtinct book or books of account, wherein he or they ſhall duly enter all ſum or ſums of money, or other effects, which he or they ſhall have got in or received out of the ſaid bankrupt's eſtate, to which book or books of account every creditor, who ſhall have proved his or her debt, ſhall at all ſeaſonable times have free reſort, and inſpect the ſame as often as he or ſhe ſhall think fit."

What perſons not qualified to chooſe.

Sect. 27. "Provided always, and be it enacted by the authority aforeſaid, That no creditor, or any other Perſon for and on the behalf of any creditor, ſhall be permitted to vote in ſuch choice of aſsignee or aſsignees, whoſe debt, or the debt of the perſon or perſons ſo authorizing him to vote, ſhall not amount to the ſum of ten pounds or upwards.

Mutual credit how to be ſettled.

Sect. 28. "And be it futher enacted by the authority aforeſaid, That where it ſhall appear to the ſaid commiſsioners, or the major part of them, that there hath been mutual credit given by the bankrupt and any other perſon, or mutual debts between the bankrupt and any other perſon, at any time before ſuch perſon became bankrupt, the ſaid commiſsioners, or the major part of them, or the aſsignees of ſuch bankrupt's eſtate, ſhall ſtate the account between them, and one debt may be ſet againſt another; and what ſhall appear to be due on either ſide on the balance of ſuch account, and on ſetting ſuch debts againſt one another, and no more, ſhall be claimed or paid on either ſide reſpectively."

Penalty on debts falſly claimed.

Sect. 29. "And whereas many abuſes have been committed by pretended creditors of bankrupts, be it enacted by the authority aforeſaid, That if any perſon at any time hereafter ſhall, before the acting commiſſioners in any commiſsion of bankrupt, or by affidavit or affirmation exhibited to them, ſwear or depoſe, or, being of the people called *Quakers*, affirm, that any ſum of money is due to him or her from any bankrupt or brankrupts, which ſum of money is not really due or owing, or ſhall ſwear or affirm, that more is due, than is really due or owing, knowing the ſame to be not due or owing, and that ſuch oath or affirmation is falſe and untrue, and being thereof convicted by indictment or information, ſuch perſon ſhall ſuffer the pains and penalties inflicted by the ſeveral ſtatutes made and now in force againſt wilful perjury, and ſhall moreover be liable to pay double the ſum ſo ſworn or affirmed to be due or owing, as aforeſaid, to be recovered and levied as other penalties and forfeitures are upon penal ſtatutes after conviction to be levied and recovered; and ſuch double ſum ſhall be equally divided among all the creditors ſeekingrelief under the ſaid commiſsion."

Commiſſioners may chooſe new aſſignees.

Sect. 30. "Provided always, and be it further enacted, That it ſhall and may be lawful for the ſaid commiſsioners authorized as aforeſaid, or the major part of them, as often as they ſhall ſee cauſe, for the better preſerving and ſecuring the bankrupt's eſtate, immediately to appoint one or more aſsignee or aſsignees of the eſtate and effects, or any part thereof; which aſsignee or aſsignees, or any of them, ſhall or may be removed or diſplaced, at the meeting of the creditors ſo to be appointed, as aforeſaid,

for choice of aſsignees, if they or the major part in value of them (whoſe debts reſpectively amount to ten pounds, or upwards, as aforeſaid) then preſent, and of ſuch perſons duly authorized, as aforeſaid, ſhall think fit; and ſuch aſsignee or aſsignees, as ſhall be ſo removed and diſplaced, ſhall deliver up and aſsign all the eſtate and effects of ſuch bankrupt, which ſhall have come to his or their hands or poſſeſsion, or which ſhall have been aſsigned by the ſaid commiſsioners, as aforeſaid, unto ſuch other aſſignee or aſsignees who ſhall be ſo choſen by the creditors, as aforeſaid; and all the eſtate and effects of the bankrupt, which ſhall be delivered up or aſsigned, ſhall be, to all intents and purpoſes, as effectually and legally veſted in ſuch new aſsignee or aſsignees, as if the firſt aſsignment had been made to him or them by the ſaid commiſsioners: And if ſuch firſt aſsignee or aſsignees ſhall refuſe or neglect, by the ſpace of ten days next after notice given of the ſaid choice of ſuch new aſsignee or aſsignees, and of his and their conſent to accept ſuch aſsignment, ſignified to the firſt aſſignee or aſsignees by writing under his or their hand or hands, to make ſuch aſsignment and delivery, as aforeſaid, every ſuch firſt aſsignee or aſsignees ſhall reſpectively forfeit the ſum of two hundred pounds, to be divided and diſtributed amongſt the creditors, towards ſatisfaction of their debts, in ſuch manner as the eſtate of the bankrupt is or ought to be divided and diſtributed, and to be recovered by action of debt, bill, plaint or information in any of his majeſty's courts of record at *Weſtminſter*, by ſuch perſon or perſons, as ſuch the major part of the commiſsioners, authorized as aforeſaid, ſhall appoint to ſue for the ſame, with full coſts of ſuit, wherein no privilege, protection, or wager in law, or more than one imparlance ſhall be allowed; any law, cuſtom, or uſage to the contrary notwithſtanding.

Penalty on firſt aſſignees not delivering up the effects to the new ones.

Sect. 31. "And whereas it may be found neceſſary, that as well aſſignments of bankrupts eſtates already made by commiſſioners, as aſſignments hereafter to be made purſuant to the choice of creditors, ſhould be vacated, and a new aſſignment or aſſignments be made of the debts and effects unreceived and not diſpoſed by the then aſſignees to, other perſons to be choſen by the creditors as aforeſaid: Be it therefore enacted and declared by the authority aforeſaid, That it ſhall and may be lawful to and for the lord chancellor, lord keeper, or commiſsioners for the cuſtody of the great ſeal of *Great Britain* for the time being, upon petition of any creditors, to make ſuch order therein as he or they ſhall think juſt and reaſonable: And in caſe a new aſſignment ſhall be ordered to be made, as aforeſaid, that then ſuch debts, effects, and eſtate of ſuch bankrupt, ſhall be thereby effectually and legally veſted in ſuch new aſſignee or aſſignees; and it ſhall and may be lawful for him and them to ſue for the ſame in his or their name or names, and to diſcharge any action or ſuit, or to give any acquittance for ſuch debts, as effectually to all intents and purpoſes, as the aſſignee or aſſignees in the former aſſignment might have done in caſe no new aſsignment had been made; any thing herein or in any former act contained or made to the contrary in any wiſe notwithſtanding: and that the ſaid commiſsioners ſhall cauſe publick notice to be given in the two *London Gazettes*

Notice of ſuch removal to be given in the Gazette.

Gazettes that ſhall immediately follow the removal of ſuch aſsignee or aſsignees, and the appointment of ſuch other aſsignee or aſsignees as aforeſaid, that ſuch aſsignee or aſsignees is or are removed, and ſuch other aſsignee or aſsignees appointed in his or their ſtead, and that ſuch perſons as are indebted to the ſaid bankrupt's eſtate, do not pay ſuch debt or debts to ſuch aſsignee or aſsignees as ſhall be removed as aforeſaid."

Sect. 32. "And whereas, by reaſon of the monies which are lodged in the hands of aſsignees until a dividend is made, aſsignees do oftentimes delay the dividing thereof, to the very great prejudice of the bankrupt's creditors: For preventing thereof, and to the end aſsignees may make ſpeedy dividends of the eſtate and effects of ſuch bankrupts, be it enacted by the authority aforeſaid, That before the creditors ſhall proceed to the choice of an aſsignee or aſsignees of any bankrupt's eſtate, the major part in value of the ſaid bankrupt's creditors then preſent ſhall, if they think fit, direct in what manner, how, and with whom, and where, the monies ariſing by, and to be received from time to time out of the bankrupt's eſtate, ſhall be paid in and remain, until the ſame ſhall be divided amongſt all the creditors, as by this act is directed; to which rule and direction every ſuch aſsignee and aſsignees, afterwards to be choſen, ſhall conform, as often as one hundred pounds ſhall be got in and received from ſuch bankrupt's eſtate, and ſhall be and are hereby indemnified for what they ſhall do in purſuance of ſuch direction of the ſaid creditors, as aforeſaid." Creditors, before chooſing aſsignees, to fix the method of dividends.

Sect. 33. "And be it further enacted by the authority aforeſaid, That every perſon or perſons choſen, or who ſhall be choſen aſsignee or aſsignees of the eſtate and effects of ſuch bankrupt, ſhall, at ſome time after the expiration of four months, and within twelve months from the time of iſſuing of ſuch commiſſion, cauſe at leaſt twenty-one days publick notice to be given in the *London Gazette*, of the time and place the commiſſioners and aſsignees intend to meet, to make a dividend or diſtribution of ſuch bankrupt's eſtate and effects: at which time the creditors, who have not before proved their debts, ſhall then be at liberty to prove the ſame; which meeting for the city of *London*, and all places within the bills of mortality, ſhall be at the *Guildhall* of the ſaid city; and upon every ſuch meeting the aſsignee or aſsignees ſhall produce, to the ſaid commiſſioners and creditors then preſent, fair and juſt accounts of all his and their receipts and payments touching the ſaid bankrupt's eſtate and effects, and of what ſhall remain outſtanding, and the particulars thereof; and ſhall, if the creditors then preſent, or the major part of them, require the ſame, be examined upon oath, or, being of the people called *Quakers*, upon ſolemn affirmation before the ſaid commiſſioners, or the major part of them, touching the truth of ſuch accounts; and in ſuch accounts the ſaid aſsignee or aſsignees ſhall be allowed and retain all ſuch ſum and ſums of money, as they ſhall have paid and expended in ſuing out and proſecuting of ſuch commiſſion, and all other juſt allowances, on account of and by reaſon or means of their being aſsignee or aſsignees; and the ſaid commiſſioners, or the major part of them, ſhall order ſuch part of the neat produce of the ſaid bankrupt's eſtate, as by ſuch accounts or otherwiſe Method of making dividends.

ſhall appear to be in the hands of the ſaid aſſignees, as they or the major part of them ſhall think fit, to be forthwith divided amongſt ſuch of the bankrupt's creditors, who have duly proved their debts under ſuch commiſſion, in proportion to their ſeveral and reſpective debts; and the commiſſioners, or the major part of them, ſhall make ſuch their order for a dividend in writing under their hands, and ſhall cauſe one part of ſuch order to be filed amongſt the proceedings under the ſaid commiſſion, and ſhall deliver unto each of the aſſignee or aſſignees, under ſuch commiſſion, a duplicate of ſuch their order likewiſe under the hands of the ſaid commiſſioners; which order of diſtribution ſhall contain an account of the time and place of making ſuch order, and the ſum total or *quantum* of all the debts proved under the ſaid commiſsion, and the ſum total of the money remaining in the hands of the aſsignee or aſsignees to be divided, and how much in particular in the pound is then ordered to be paid to every creditor under the ſaid commiſsion; and the ſaid aſsignee or aſſignees, in purſuance of ſuch order, and without any deed or deeds of diſtribution to be made for that purpoſe, ſhall forthwith make ſuch dividend and diſtribution accordingly, and ſhall take receipts, in a book to be kept for that purpoſe, from each creditor, for the part or ſhare of ſuch dividend or diſtribution, which he or they ſhall make and pay to each creditor reſpectively; and ſuch order and receipt ſhall be a full and effectual diſcharge to ſuch aſsignee, for ſo much as he ſhall fairly pay, purſuant to ſuch order, as aforeſaid."

Sect. 34. "And whereas aſsignees are, and may ſometimes be prevented from making ſuch ſpeedy dividends of the eſtate and effects of bankrupts, as by this act is intended, by reaſon of debts due, or pretended and claimed to be due from ſuch bankrupts, upon long and intricate accounts or demands, which are diſputed or not admitted by the commiſsioners and creditors to be juſt and fair debts, and ſuch claimants are thereby obliged to aſcertain ſuch their demands by actions or ſuits in law or equity, which are oftentimes many years depending, and many other differences and difficulties do ariſe under commiſsions of bankrupts, which might be determined by arbitration, if aſsignees had power to ſubmit the ſame; be it therefore enacted by the authority aforeſaid, That it ſhall and may be lawful to and for the aſsignee or aſsignees of any bankrupt's eſtate and effects, by and with the conſent of the major part in value of the bankrupt's creditors, who ſhall have duly proved their debts under ſuch commiſſion, and who ſhall be preſent at any meeting of the ſaid creditors, purſuant to notice to be for that purpoſe given in the *London Gazette*, to ſubmit any difference or diſpute between ſuch aſſignee or aſſignees, and any perſon or perſons whatſoever, for or on account, or by reaſon or means of any matter, cauſe, or thing whatſoever, relating to ſuch bankrupt or bankrupts, his, her or their eſtate or effects, to the final end and determination of arbitrators to be choſen by the ſaid aſſignee or aſſignees, and the major part in value of ſuch creditors, and the party or parties with whom they ſhall have ſuch difference, and to perform the award of ſuch arbitrators, or otherwiſe to compound and agree the matters in difference and diſpute between them,

Aſſignees, with conſent of creditors, may ſubmit diſputes to arbitration.

in

in ſuch manner as the ſaid aſſignee or aſſignees, with ſuch conſent as aforeſaid, ſhall think fit, and can agree, and the ſame ſhall be binding to all the creditors of the ſaid bankrupt or bankrupts; and the aſſignees are hereby indemnified for what they ſhall fairly do according to the direction aforeſaid."

Aſſignees with conſent of creditors may compound for debts.

Sect. 35. "And be it further alſo enacted by the authority aforeſaid, That any aſſignee or aſſignees, made or choſen as aforeſaid, ſhall be and is and are hereby impowered, by and with the conſent of the major part of ſuch bankrupt's creditors in value, who ſhall be preſent at a meeting to be had for that purpoſe, of which publick notice ſhall be given in the *London Gazette*, to make compoſition with any perſon or perſons, debtors or accountants to ſuch bankrupts, where the ſame ſhall appear neceſſary and reaſonable, and to take ſuch reaſonable part, as can upon ſuch compoſition be gotten, in full diſcharge of ſuch debts and accounts; any law, cuſtom, or uſage to the contrary notwithſtanding."

Bankrupts, after allowance of certificate, to attend aſſignees in ſettling accounts.

Sect. 36. "Provided always, and be it enacted by the authority aforeſaid, That after ſuch bankrupt or bankrupts ſhall have obtained his, her or their certificate, and the ſame ſhall be duly confirmed, as herein is mentioned, every ſuch bankrupt or bankrupts ſhall, and is, and are hereby obliged to give his, her or their attendance, upon every reaſonable notice in writing, to be given to him, her or them, or to be left at his, her or their uſual place of abode, by the aſſignee or aſſignees, or their order, thereby requiring him, her or them, to attend the aſſignee or aſſignees of ſuch bankrupt's eſtate, in order to make up, adjuſt or ſettle any account or accounts between ſuch bankrupt or bankrupts, and any debtor to or creditor of ſuch bankrupt's eſtate, or to attend any court or courts of record, in order to be examined touching the ſame, or for ſuch other buſineſs, which ſuch aſſignee or aſſignees ſhall judge neceſſary for getting in the ſaid bankrupt's eſtate and effects, for the benefit of his, her or their creditors; for which ſaid attendance the bankrupt ſhall be allowed and paid the ſum of two ſhillings and ſix pence *per diem*, by ſuch aſſignee or aſſignees, out of the bankrupt's eſtate; and in caſe ſuch bankrupt or bankrupts ſhall neglect or refuſe to attend, or on ſuch attendance ſhall refuſe to aſſiſt in ſuch diſcovery, without good and ſufficient cauſe to be ſhewn to the commiſſioners, or the major part of them, for ſuch his, her or their neglect or refuſal to be by them allowed as ſufficient, ſuch aſſignee or aſſignees making due proof thereof upon oath, or being of the people called *Quakers*, upon ſolemn affirmation before the ſaid commiſſioners authorized as aforeſaid, or the major part of them, the ſaid commiſſioners, or the major part of them, are hereby impowered and required to iſſue a warrant or warrants, directed to ſuch perſon or perſons as they ſhall think proper, for apprehending ſuch bankrupt or bankrupts, and him, her, or them, to commit to the county gaol, there to remain in cloſe cuſtody without bail or mainprize, until he, ſhe or they ſhall duly conform to the ſatisfaction of the ſaid commiſſioners authorized as aforeſaid, and be by the ſaid commiſſioners, or the ſpecial order of the lord chancellor, lord keeper, or commiſſioners for the cuſtody of the great ſeal of *Great Britain* for the time being, or otherwiſe

Allowance for attendance.

Impriſonment on non-attendance.

otherwiſe by due courſe of law diſcharged; and ſuch gaoler or keeper of ſuch priſon, to which ſuch bankrupt or bankrupts ſhall be committed, is hereby required to keep ſuch perſon or perſons in cloſe cuſtody, within the walls of the ſaid priſon, until he, ſhe or they be duly diſcharged as aforeſaid, under the pains and penalties before mentioned, for ſuch gaoler or keeper ſuffering ſuch priſoners, committed purſuant to this act, to eſcape and go at large.

Final dividend within 18 months.

Sect. 37. "And be it further enacted by the authority aforeſaid, That within eighteen months next after the iſſuing of any ſuch commiſſion as aforeſaid, the aſſignee or aſſignees ſhall make a ſecond dividend of the bankrupt's eſtate and effects, in caſe the ſame was not wholly divided upon the firſt dividend, and ſhall cauſe a notice to be inſerted in the *London Gazette*, of the time and place the ſaid commiſſioners intend to meet to make a ſecond dividend and diſtribution of ſuch bankrupt's eſtate or effects, and for the creditors, who ſhall not before have proved their debts, to come and prove the ſame; and at ſuch meeting, every ſuch aſſignee or aſſignees ſhall produce upon oath or affirmation, as aforeſaid, his, her or their account or accounts of the bankrupt's eſtate and effects, and what upon the ballance thereof ſhall appear to be in his, her or their hands, ſhall, by the like order of the commiſſioners, or the major part of them, be forthwith divided among ſuch of the bankrupt's creditors, who ſhall have made due proof of their debts, in proportion to their ſeveral and reſpective debts; which ſecond dividend ſhall be final, unleſs any ſuit at law or in equity ſhall be depending, or any part of the eſtate ſtanding out, that cannot have been diſpoſed of, or that the major part of the creditors ſhall not have agreed to be ſold and diſpoſed of in manner aforeſaid, or unleſs ſome other or future eſtate or effects of the ſaid bankrupt ſhall afterwards come to, or veſt in, the ſaid aſſignee or aſſignees; in which caſe the ſaid aſſignee or aſſignees ſhall, as ſoon as may be, convert ſuch future or other eſtate and effects into money in manner aforeſaid, and ſhall, within two months next after the ſame ſhall be converted into money as aforeſaid, by the like order of the commiſſioners, or the major part of them, divide the ſame, among ſuch bankrupt's creditors, who ſhall have made due proof of their debts under ſuch commiſſion.

Exceptions.

No ſuit in equity to be commenced without conſent of creditors.

Sect. 38. "Provided always, that no ſuit in equity ſhall be commenced by any aſſignee or aſſignees, without the conſent of the major part in value of the creditors of ſuch bankrupt, who ſhall be preſent at a meeting of the creditors, purſuant to notice to be given in the *London Gazette* for that purpoſe."

Bankers, brokers, and factors liable to ſtatutes.

Sect. 39. "And whereas perſons dealing as bankers, brokers, and factors, are frequently intruſted with great ſums of money, and with goods and effects of very great value belonging to other perſons: it is hereby further enacted, that ſuch bankers, brokers, and factors, ſhall be, and are hereby declared to be ſubject and liable to this and other the ſtatutes made concerning bankrupts."

Perſons not liable.

Sect. 40. "Provided always, and it is hereby further declared and enacted by the authority aforeſaid, that no farmer, grazier, or drover of cattle, or any

any perſon or perſons, who is, or are, or ſhall be receiver general of the taxes granted by act of parliament, ſhall be intitled as ſuch to any of the benefits given by this act, or be deemed a bankrupt within the ſame, or within any of the ſtatutes now in force concerning bankrupts; any law, cuſtom or uſage to the contrary notwithſtanding."

Sect. 41. And whereas commiſſions of bankrupts, and the depoſitions taken before the commiſſioners of bankrupts, and the proceedings upon ſuch commiſſions, are moſt commonly kept by ſuch perſons as act as clerks or ſecretaries to ſuch commiſſioners, and, by reaſon of the death of ſuch clerks or ſecretaries, are many times loſt and miſlaid, by means whereof ſuch perſons, as have or may purchaſe any meſſuages, lands, tenements, or hereditaments, under any commiſſion grounded upon the ſtatutes made concerning bankrupts, may be diſabled to make out their right and title to the ſame: And there being no certain place where the creditors of any bankrupt, or any perſon or perſons claiming any eſtate or intereſt in any meſſuages, lands, tenements, or hereditaments, by or under any ſuch commiſſion as aforeſaid, can have recourſe to ſuch commiſſion and the proceedings thereupon; and ſuch commiſſions, depoſitions, and proceedings, in caſe they can be produced, are not at preſent of record, nor can be given in evidence, which may be of very evil conſequence to ſuch purchaſers or perſons claiming as aforeſaid: Be it therefore further enacted by the authority aforeſaid, That upon the petition of any perſon or perſons to the lord chancellor, lord keeper, or commiſſioners for the cuſtody of the great ſeal of *Great Britain*, praying, that ſuch commiſſions, and the depoſitions taken thereon, or any part of ſuch depoſitions, and ſuch certificates ſo to be allowed and confirmed, as aforeſaid, or any certificates heretofore allowed and confirmed, or any other matters or things relating to the ſaid commiſſions, or the proceedings thereupon, may be entred of record, the lord high chancellor, lord keeper, or commiſſioners of the great ſeal, ſhall and may direct and order ſuch commiſſions, depoſitions, proceedings, and certificates, or other matters or things, to be entred of record; and in caſe of the death of the witneſſes proving ſuch bankruptcy, or in caſe the ſaid commiſſions, depoſitions, proceedings, or other matters or things, ſhall be loſt or miſlaid, a true copy of the record of ſuch commiſſions, depoſitions, and proceedings, or other matters or things, ſigned and atteſted as herein after is mentioned, ſhall and may, upon all occaſions, be given in evidence to prove ſuch commiſſions, and the bankruptcy of ſuch perſon, againſt whom ſuch commiſſion hath been or ſhall be awarded, or other matters or things; any law, uſage, or cuſtom, to the contrary notwithſtanding: And all certificates, which have been allowed and confirmed, or to be allowed and confirmed, and entred of record, as aforeſaid, or a true copy of every certificate ſigned and atteſted as herein after mentioned, ſhall and may be given in evidence in any of his majeſty's courts of record, and be, without any further proof, deemed, adjudged, and taken to be a full and effectual bar and diſcharge of and againſt any action or ſuit, which ſhall be commenced or brought by any creditor or creditors of ſuch bankrupt, for any debt or demand contracted, due, or demandable before the

Proceedings to be entred on Record,

by direction of the lord chancellor.

the iſſuing of ſuch commiſſion, unleſs any creditor or creditors of the perſon that hath ſuch certificate, ſhall prove that ſuch certificate was fraudulently obtained; in which caſe coſts ſhall be allowed to either party, as in other common caſes: And to the end any creditor or other perſon or perſons may know where to ſearch and ſee whether ſuch commiſſion hath iſſued, and find what depoſitions have been taken by virtue thereof, and what proceedings have been thereupon, and whether the ſaid bankrupt hath made ſuch affidavit or affirmation, as aforeſaid, and whether ſuch certificates are entred of record, as aforeſaid, and all other matters or things, which ſhall be entred of record in purſance of this act, the lord high chancellor, lord keeper, or commiſſioners for the cuſtody of the great ſeal, ſhall appoint a certain proper place near the Inns of Court, where all and every the matters aforeſaid ſhall be entred of record, where all perſons ſhall be at liberty to ſearch and ſee if the ſame are duly entred of record; and the lord chancellor, lord keeper, or commiſſioners ſhall, by a writing under his or their hands, appoint a proper perſon, who ſhall, by himſelf, or his ſufficient deputy, to be approved by the lord high chancellor, lord keeper, or commiſſioners, by a writing under his or their hands, enter of record ſuch commiſſions, depoſitions, proceedings, and certificates, and other matters and things, and have the cuſtody of the entries thereof; and alſo appoint ſuch fee and reward to be paid to ſuch perſon, for his labour and pains therein, as the lord high chancellor, lord keeper, or commiſſioners ſhall think reaſonable, not exceeding what is uſually paid in the like caſes; and that the perſon ſo to be appointed, and his deputy, ſhall continue to enter of record all and every the matters and things aforeſaid, and to have the cuſtody of the ſame, ſo long as he or they ſhall reſpectively behave themſelves well in entering the ſame of record, and keeping ſuch entries, and ſhall not be removed, but by order in writing under the hand of the lord high chancellor, lord keeper, or commiſſioners, on a good and ſufficient cauſe therein ſpecified; and in caſe ſuch perſon ſhall die, or be, as aforeſaid, removed, the lord high chancellor, lord keeper, or commiſſioners for the time being, ſhall and may, in writing under his or their hands, appoint another perſon to enter the ſame of record, who ſhall have the cuſtody of the entries thereof, and ſhall have and receive the like fee and reward for his labour and pains therein.

Liberty to ſearch.

Sect. 42. And whereas the ſuing out and proſecuting of commiſſions of bankrupts is at preſent very expenſive, to the great prejudice of the bankrupt and his creditors: Be it further enacted by the authority aforeſaid, That there ſhall not be paid or allowed by the creditors, or out of the eſtate of the bankrupt, any monies whatſoever for expences in eating or drinking of the commiſſioners, or of any other perſons at the times of the meeting of the ſaid commiſſioners, or any of the creditors: And that no ſchedule ſhall be annexed to any deed of aſſignment of the perſonal eſtate of ſuch bankrupt from the commiſſioners to the aſſignee or aſſignees of the ſaid eſtate: And if any commiſſioner or commiſſioners in any commiſſion ſhall order any ſuch expence to be made, or eat or drink at any ſuch meeting at the charge of the creditors, or out of the eſtate of ſuch bankrupt,

Clauſe to prevent unneceſſary expences.

bankrupt, or receive or take above the ſum of twenty ſhillings each commiſſioner for each reſpective meeting, every ſuch commiſſioner ſo offending ſhall be diſabled for ever to act as a commiſſioner, in ſuch or any other commiſſion founded on this act, or any of the ſtatutes made concerning bankrupts.

Sect. 43. Provided always, and be it further enacted by the authority aforeſaid, That the ſaid commiſſioners, authorized as aforeſaid, and every of them, ſhall not be capable of acting as a commiſſioner or commiſſioners in the execution of any of the powers and authorities given and granted by this preſent act, or any other act or acts of parliament now in force concerning bankrupts, after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-two (unleſs it be the power hereby given of adminiſtring oaths to commiſſioners), until ſuch time as he and they reſpectively ſhall have taken an oath to the effect following; that is to ſay,

Commiſſioners Oath.

I A. B. *do ſwear, that I will faithfully, impartially, and honeſtly, according to the beſt of my ſkill and knowledge, execute the ſeveral powers and truſts repoſed in me as a commiſſioner in a commiſſion of bankrupt againſt and that without favour or affection, prejudice or Malice.*

So help me God.

A memorial thereof to be regiſtered.

Sect. 44. "Which oath any two or more of the ſaid commiſſioners are hereby impowered and required to adminiſter to each other in the ſame commiſſion named and authorized; and they the ſaid commiſſioners ſhall and are hereby required to enter and keep a memorial or memorials thereof, ſigned by them reſpectively, among the depoſitions and other proceedings on each reſpective commiſſion that ſhall be iſſued forth by virtue of this act, or any other act or acts of parliament now in force concerning bankrupts."

Commiſſions not to abate by the death of his majeſty, &c.

Sect. 45. "And be it further enacted by the authority aforeſaid, That no commiſſion of bankrupt ſhall abate by reaſon of the death of his preſent majeſty (whom God long preſerve) his heirs or ſucceſſors, but ſuch commiſſions ſhall continue in full force; and if it ſhall be neceſſary to renew any ſuch commiſſion by reaſon of the death of the commiſſioners named in ſuch commiſſion, ſo that a ſufficient number of commiſſioners ſhall not be living who can act therein, or for any other cauſe, in every ſuch caſe ſuch commiſſion ſhall be renewed, and but half of the fees uſually paid upon granting or obtaining of commiſſions of bankrupt ſhall be paid for any ſuch renewed commiſſions.

Bills of fees, &c. to be ſettled by a maſter in chancery.

Sect. 46. "And to the end that commiſſions of bankrupt may be carried on and proſecuted with as little expence as reaſonably may be, be it enacted by the authority aforeſaid, That all bills of fees or diſburſements claimed or demanded by any ſolicitor, clerk, or attorney, employed under any commiſſion of bankrupt, ſhall be ſettled, adjuſted, and certified by one of the maſters of the court of chancery; and ſo much as the maſter ſhall

certify to be due to ſuch clerk, ſolicitor, or attorney, and no more, ſhall be paid by the aſſignee under ſuch commiſſion; and the maſter, who ſhall ſettle and adjuſt ſuch bill, ſhall have and receive for his care in ſettling and adjuſting the ſame, as alſo for his certificate thereof, the ſum of twenty ſhillings, and no more.

Certificates of bankrupts before 14 May 1729. on conformity, confirmed;

Sect. 47. "And whereas ſeveral bankrupts have either through inadvertency, or the intricacy and multiplicity of their affairs, failed to obtain, within the time limited, certificates allowed as directed by a clauſe in an act paſſed in the third year of the reign of his preſent majeſty (amongſt other things) for relief of bankrupts whoſe certificates were not allowed before the expiration of a late act for the better preventing frauds committed by bankrupts, now expired, notwithſtanding they have diſcovered all their eſtate and effects, and delivered the ſame up for the benefit of their creditors, and been conformable unto the ſaid act in other particulars; Be it therefore further enacted by the authority aforeſaid, That all and every bankrupt and bankrupts, who was or were declared a bankrupt or bankrupts on or before the fourteenth day of *May* one thouſand ſeven hundred and twenty-nine, and have diſcovered all their eſtate and effects, and have delivered up the ſame for the benefit of their creditors, ſhall be intitled to all and ſingular the relief, benefit, and advantages, and be ſubject and liable to all the penalties mentioned or contained in the act of parliament paſſed in the fifth year of the reign of his late majeſty king *George* the firſt, intituled, An act for the better preventing frauds committed by bankrupts, if they already have obtained, or ſhall hereafter, at any time before the twenty-fifth day of *March* one thouſand ſeven hundred and thirty-three, obtain certificates of their conformity purſuant to the ſaid act; and ſuch certificates ſhall be allowed and confirmed as the ſaid act directs; any thing herein contained to the contrary notwithſtanding.

and proceedings againſt them diſcharged.

Sect. 48. "And whereas actions may have been brought againſt ſuch bankrupts, and other proceedings had thereon for cauſes and matters ariſing and growing due before the time of the bankruptcy of ſuch bankrupts, be it further enacted by the authority aforeſaid, That all ſuch actions, and all proceedings thereon for any ſuch cauſes or matters, ſhall be and are hereby diſcharged againſt ſuch bankrupts and their bail, ſo obtaining ſuch certificates allowed as aforeſaid.

Duration of the act.

Sect. 49. "And be it further enacted by the authority aforeſaid, That this act ſhall continue and be in force for the ſpace of three years, from the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-two, and from thence to the end of the then next ſeſſion of parliament, and no longer. *Continued by ſeveral acts, and by the laſt continuance* (4 *Geo.* 3. *c.* 36.) *it is of force till September* 29, 1771, *and to the end of the then next ſeſſion of parliament.*

19 Geo. 2. c. 32.

Stat. 19 *Geo.* 2. *c.* 32. [*A. D.* 1746. *intituled*] "An act for amending the laws relating to bankrupts."

"Whereas many perſons within the deſcription of, and liable to the ſtatutes concerning bankrupts, frequently commit ſecret acts of bankruptcy unknown

unknown to their creditors and other perſons, with whom, in the courſe of trade they have dealings and tranſactions: and after the committing thereof continue to appear publickly and carry on their trade and dealings, by buying and ſelling of goods and merchandizes, drawing, accepting, and negociating bills of exchange, and paying and receiving money, on account thereof, in the uſual way of trade, and in the ſame open and publick manner as if they were ſolvent perſons, and had not become bankrupt: And whereas the permitting ſuch ſecret acts of bankruptcy to avoid and defeat payments, really and *bona fide* made in the caſes and under the circumſtances above mentioned, where the perſons receiving the ſame had not notice of, or were privy to ſuch perſons having committed any act of bankruptcy, will be a great diſcouragement to trade and commerce, and a prejudice to credit in general: Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the twenty-ninth day of *October*, in the year of our lord one thouſand ſeven hundred and forty ſix, no perſon who is or ſhall be really and *bona fide* a creditor of any bankrupt, for or in reſpect of goods really and *bona fide* ſold to ſuch bankrupt, or for or in reſpect of any bill or bills of exchange really and *bona fide* drawn, negociated, or accepted by ſuch bankrupt, in the uſual and ordinary courſe of trade and dealing, ſhall be liable to refund or repay to the aſſignee or aſſignees of ſuch bankrupt's eſtate, any money which, before the ſuing forth of ſuch commiſſion, was really and *bona fide*, and in the uſual and ordinary courſe of trade and dealing, received by ſuch perſon of any ſuch bankrupt, before ſuch time as the perſon receiving the ſame ſhall know, underſtand or have notice that he is become a bankrupt, or that he is in inſolvent circumſtances.

After 29 October, 1746, Creditors of bankrupts not liable to refund to the aſſignees monies received before notice of inſolvency, &c.

Sect. 2. "And whereas merchants, and other traders, frequently lend money on bottom-ree, or at reſpondentia, and in the courſe of their trade frequently cauſe their ſhips or veſſels, and the goods and merchandizes loaded thereon, to be inſured; and where commiſſions of bankruptcy have iſſued againſt the obligor in ſuch bottom-ree, or reſpondentia bond, or the under-writer, or aſſurer in ſuch aſſurance, before the loſs of the ſhip or goods, in ſuch bond or policy of inſurance mentioned, hath happened, it hath been made a queſtion, whether the obligee or obligees in ſuch bond, or the aſſured in ſuch policy of inſurance, ſhould be let in to prove their debts, or be admitted to have any benefit or dividend under ſuch commiſſion, which may be a diſcouragement to trade: For remedy whereof be it enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *October*, the obligee in any bottom-ree, or reſpondentia bond, and the aſſured in any policy of Aſſurance, made and entered into upon a good and valuable conſideration *bona fide*, ſhall he admitted to claim; and after the loſs or contingency ſhall have happened, to prove his, her or their debt and demands in reſpect of ſuch bond or policy of inſurance, in like manner as if the loſs or contingency had happened before the time of the iſſuing of the commiſſion of bankruptcy againſt ſuch obligor

Obligees in bottom-ree, &c. admitted to claim

or inſurer; and ſhall be intitled unto, and ſhall have and receive a proportionable part, ſhare, and dividend of ſuch bankrupt's eſtate, in proportion to the other creditors of ſuch bankrupt, in like manner as if ſuch loſs or contingency had happened before ſuch commiſſion iſſued; and all and every perſon or perſons againſt whom, from and after the ſaid twenty-ninth day of *October*, any commiſſion of bankruptcy ſhall be awarded, ſhall be diſcharged of and from the debt or debts owing by him, her or them, on every ſuch bond and policy of inſurance, as aforeſaid, and ſhall have the benefit of the ſeveral ſtatutes now in force againſt bankrupts, in like manner, to all intents and purpoſes, as if ſuch loſs or contingency had happened, and the money due in reſpect thereof had become payable, before the time of the iſſuing of ſuch commiſſion."

Dividends.

Bankrupts diſcharged from debts on policy of inſurance, &c.

24 Geo. 2. 57. **Stat.** 24 *Geo.* 2. *c.* 57. [*A. D.* 1751] *made among other purpoſes*, "To make ſome further proviſions in relation to the ſigning of certificates for the diſcharge of bankrupts."

Sect. 9. "And whereas many abuſes have been committed by bankrupts, and perſons who, with their privity, have attempted to prove fictitious and pretended debts under commiſſions of bankruptcy, in order that ſuch perſons might be enabled to ſign their conſent to the certificates for diſcharging ſuch bankrupts from their debts: For remedy whereof, and in order to prevent the like fraudulent and wicked practices for the future, Be it enacted by the authority aforeſaid, That where any perſons ſhall fraudulently ſwear or depoſe, or being of the people called *Quakers* affirm, before the major part of the commiſſioners named in any commiſſion of bankruptcy, or by affidavit or affirmation exhibited to them, that a ſum of money is due to him or her from any bankrupt or bankrupt's, which ſhall in fact not be really and truly ſo due or owing; and ſhall, in reſpect of ſuch fictitious and pretended debt, ſign his or her conſent to the certificate for ſuch bankrupt's diſcharge from his debts; that in every ſuch caſe, unleſs ſuch bankrupt ſhall, before ſuch time as the major part of the ſaid commiſſioners ſhall have ſigned ſuch certificate, by writing by him to be ſigned and delivered to one or more of the ſaid commiſſioners, or to one or more of the aſſignees of his eſtate and effects under ſuch commiſſion, diſcloſe the ſaid fraud, and object to the reality of ſuch debt, ſuch certificate ſhall be null and void to all intents and purpoſes, and ſuch bankrupt ſhall not in that caſe be intitled to be diſcharged from his debts, or to have or receive any of the benefits or allowances given or allowed to bankrupts by the ſaid act of the fifth year of his preſent majeſty's reign; any thing therein contained to the contrary thereof in any wiſe notwithſtanding."

Perſons ſwearing to a fictitious debt from a bankrupt, and ſigning the certificate; unleſs the bankrupt ſhall diſcloſe the fraud, the certificate to be null, &c.

Sect. 10. "And it is hereby enacted, that where any creditor or creditors of any bankrupt reſide in foreign parts, the letter of attorney of ſuch creditor, atteſted by a notary publick in the uſual form, ſhall be a ſufficient evidence of the power and authority by which any perſon thereby authorized ſhall ſign any bankrupt's certificate; any thing in the ſaid act of the fifth year

Letter of attorney from Creditor in foreign parts, to authorize ſigning certificate

year of his preſent majeſty's reign to the contrary thereof in any wiſe notwithſtanding."

Stat. 4 *Geo.* 3. *c.* 33. [*A. D.* 1764 *intituled*] "An act for preventing inconveniencies ariſing in caſes of merchants, and ſuch other perſons as are within the deſcription of the ſtatutes relating to bankrupts, being intitled to privilege of parliament, and becoming inſolvent." 4 Geo. 3. c. 33.

"Whereas, merchants, bankers, brokers, factors, ſcriveners, and traders, within the deſcription of the ſtatutes relating to bankrupts, having privilege of parliament, are not compellable to pay their juſt debts, or to become bankrupts, by reaſon of the freedom of their perſons from arreſts upon civil proceſs; and ſome doubts have alſo ariſen, whether in caſes of bankruptcy, a commiſſion can be ſued out during the continuance of ſuch privilege: To remedy which inconveniences, and to ſupport the honour and dignity of parliament, and good faith and credit in commercial dealings, which require, that in ſuch caſes, the laws ſhould have their due courſe, and that no ſuch merchants, bankers, brokers, factors, ſcriveners, or traders, in caſe of actual inſolvency, ſhould, by any privilege whatever, be exempted from doing equal juſtice to all their creditors; Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and it is hereby enacted by the authority of the ſame, That from and after the eleventh day of *May*, one thouſand ſeven hundred and ſixty-four, it ſhall be lawful for any ſingle creditor, or two or more creditors, being partners, whoſe debt or debts ſhall amount to one hundred pounds or upwards, and for any two creditors whoſe debts ſhall amount to one hundred and fifty pounds or upwards, or any three or more creditors whoſe debts ſhall amount to two hundred pounds or upwards, of any perſon or perſons deemed a merchant, banker, broker, factor, ſcrivener, or trader or traders, within the deſcription of the acts of parliament relating to bankrupts, having privilege of parliament, at any time, upon affidavit or affidavits being made and filed on record in any of his majeſty's courts at *Weſtminſter* by ſuch creditor or creditors, that ſuch debt or debts is or are juſtly due to him or them reſpectively, and that every ſuch debtor, as he or they verily believe, is a merchant, banker, broker, factor, ſcrivener, or trader, within the deſcription of the ſtatutes relating to bankrupts, to ſue out of the ſame court a ſummons, or an original bill and ſummons, againſt ſuch merchant, banker, broker, factor, ſcrivener, or trader, and ſerve him with a copy thereof; and if ſuch merchant, banker, broker, factor, ſcrivener, or trader, ſhall not within two months after perſonal ſervice of ſuch ſummons (affidavits of the debt or debts having been duly made and filed as aforeſaid) pay, ſecure, or compound for, ſuch debt or debts, to the ſatisfaction of ſuch creditor or creditors, or enter into a bond in ſuch ſum, and with two ſuch ſufficient ſureties, as any of the judges, of that court out of which ſuch ſummons ſhall iſſue ſhall approve of, to pay ſuch ſum as ſhall be recovered in ſuch action or actions, together with ſuch coſts as ſhall be given in the ſame, he ſhall be accounted and adjudged a bankrupt from the time of the ſervice of ſuch ſum-

Preamble.

From and after 11 May 1764, creditors, to a certain value, of any merchant, &c. within the deſcription of the laws relating to bankrupts, having privilege of parliament, may, upon affidavit made of the debt, and filed in any of the courts at Weſtminſter, ſue out a ſummons, or original bill, &c. againſt ſuch debtor: and if he ſhall not, within 2 months, pay, ſecure, or compound for the debt, he ſhall be adjudged a bankrupt; and

a commiſſion may be accordingly ſued out and againſt him.

ſummons; and any creditor or creditors may ſue out a commiſſion againſt any ſuch perſon, and proceed thereon in like manner as againſt other bankrupts.

But this act is not to extend to ſuch debts as were contracted before 8 March, 1764.

Sect. 2. "Provided always, and it is hereby declared, That this act ſhall not extend, or be deemed or conſtrued to extend to any of ſuch debts as aforeſaid contracted before the eighth day of *March* one thouſand ſeven hundred and ſixty-four; any thing herein before contained to the contrary thereof in any wiſe notwithſtanding.

But any merchant, &c. committing an act of bankruptcy after the laſt day of this ſeſſion, the creditors may ſue out a commiſſion againſt him, and the commiſſioners proceed therein, as againſt other bankrupts, notwithſtanding his privilege.

Sect. 3. "And be it further enacted by the authority aforeſaid, That if any merchant, banker, broker, factor, ſcrivener, or trader, ſhall, after the laſt day of this ſeſſion of parliament, commit any act of bankruptcy, that then, and in ſuch caſe, any creditor or creditors as aforeſaid may ſue out a commiſſion of bankrupt againſt ſuch merchant, banker, broker, ſcrivener, or trader; and the commiſſioners in ſuch commiſſion, and other perſons, may proceed thereon in like manner as againſt other bankrupts; any privilege of parliament to the contrary notwithſtanding."

Perſons intitled to privilege not ſubject to arreſt, &c. except in caſes made felony.

Sect. 4. "Provided nevertheleſs, and be it enacted, That nothing in this act ſhall ſubject any perſon intitled to privilege of parliament to be arreſted, or impriſoned, during the time of ſuch privilege, except in caſes made felony by the acts relating to bankrupts, or any of them."

Who may be a bankrupt.

"Any merchant or other perſon, uſing or exerciſing the trade of merchandize, by way of bargaining, exchange, rechange, bartry, cheviſance, or otherwiſe, in groſs or by retail; or ſeeking his or her trade of living, by buying and ſelling; and being ſubject born of this realm, or of any the queen's dominions, or denizen, ſhall be reputed, deemed and taken for a bankrupt." *Stat.* 13 *Eliz. c.* 7. See page 245.

Any merchant or other perſon] Every man or woman, who gets his or her living by buying and ſelling, by trade or merchandize, may come under the denomination of a bankrupt, upon his or her failing in the world. *Cro. Car.* 549. *Mar.* 34 *pl.* 67.

Uſing or exerciſing the trade of merchandize] Though the party has left off his trade for ſome time, yet if he abſconds, &c. for debt contracted during his trade, he is ſtill liable to the bankrupt laws. *Sid.* 411. *pl.* 7. *Lev.* 17. 3 *Keb.* 451. *pl. Green* 6. So he is for debts contracted *in* his trade, tho' newly ſecured after his leaving off his trade. 1 *Com. Dig.* 521. Or if he leaves off his trade, but puts his ſtock into the hands of another with whom he is partner in gain and loſs. *Palm.* 325. 1 *Bur. Rep.* 8. Or if he has effects of his trade in his hands, and upon the credit of them contracts debts, though he does not buy any more goods. *Ventr.* 166. or if he becomes ſecurity for another, becauſe he is truſted upon the reputation of his ſtock and dealings, as well where he is ſecurity, as where he contracts for his own debts. *Palm.* 325.

By way of bargaining, exchange, rechange] Drawing and redrawing bills of exchange for large ſums of money, and a continuation of it, is a trafficking

trafficking in *exchange*, and a trading which will make a man liable to a commiſſion of bankrupt, though a loſs enſues to the bankrupt by ſo doing. 1 *Atk. Rep.* 128.

Cheviſance] Cheviſance comes from the French word *Chevir*, *Venir a chef de quelque choſe*, to come to the end or head of a buſineſs: And becauſe the perfecting of a bargain is the drawing of the matter to a head, this word *Cheviſance* is uſed for *bargaining* in the ſtat. 13 *Eliz. c.* 7. &c. *Cowell. Termes de la ley.* 2 *Du Freſne's Gloſſary* 569.

Being a natural-born ſubject] The benefits, as well as the penal parts of the bankrupt laws, are extended as well to *aliens*, as to natural-born ſubjects; being intended entirely for the detection of frauds, in which aliens are often as deeply concerned as natives. 2 *Black. Com.* 474, 475. And the laws made againſt bankrupts ſhall be beneficially conſtrued for the benefit of creditors. *Stat.* 21 *Jac.* 1. *c.* 19. See page 257.

Bankers, brokers, and factors are ſubject to the laws concerning bankrupts. *Stat.* 5 *Geo.* 2. *c.* 30. *ſect.* 39. See page 286. Bankers, &c.

A commiſſion of bankrupcy was taken out againſt a clergyman, who inſiſted, that as he is a clergyman, he is not liable to become a bankrupt within the intent of any of the bankrupt ſtatutes; lord chancellor *Hardwicke* would not ſuperſede the commiſſion, or direct an iſſue, but left the petitioner to his action at law. 1 *Atk. Rep.* 196. The ſtat. 21 *Hen. c.* 13. *ſect.* 5. (whereby it is enacted, that no ſpiritual perſon ſhall buy to ſell again any merchandize, corn, cattle, &c.) will not exempt a clergyman from being a bankrupt, for he cannot take advantage of the breach of one law to excuſe him from the breach of another. 1 *Atk.* 199. Clergymen are ſubject to the bankrupt laws.

Though the trade be a very inferior one, yet if the party get his living thereby, it will be a ſufficient (1 *Com. Dig.* 521) trading to make him bankrupt; as carpenters, or ſhip-carpenters. 3 *Mod. Rep.* 155. Lord *Raym.* 741. but it ſeems otherwiſe of a mere working carpenter. 3 *Mod.* 155. Carpenters, &c.

Cow-keepers may be bankrupts. *Goodinge* 13. So may dyers. *Cro. Jac.* 585. *pl.* 6. See *Gilb. Caſ.* 116. 10 *Mod.* 196. Victuallers may become bankrupts. Lord *Raym.* 287. 12 *Mod.* 159. Cowkeepers, &c.

Though the party does not ſell the ſame wares which he buys, but converts them to ſaleable commodities, and then ſells them (*Com. Dig.* 521); as bakers (3 *Mod.* 330), brewers (*Com. Dig.* 521); clothiers, who buy wool, and convert it to cloths (*Com. Dig.* 521); goldſmiths (*Stone* 120); ironmongers (*Com. Dig.* 521) who buy rod or bar irons, and cauſe it to be worked up into wares; lockſmiths (*Com. Dig.* 521); milliners (*Lex mercat' rediviv.* 448); nailers (*Good.* 12); ſaleſmen (*Com. Dig.* 521); ſhoemakers (*Com. Dig.* 521); ſmiths (2 *Black. Com.* 476); tanners (3 *Mod.* 330. *Hut.* 46); taylors (*Read. ſtat. L.* 185); weavers (*Cro. Jac.* 585), and the like; for here though part of the gain is by bodily labour, and not by buying and ſelling, yet they are within the ſtatutes of bankrupts; for the labour is only in melioration of the commodity, and rendering it more fit for ſale. 2 *Black. Com.* 476. Bakers, &c.

Where a perſon carries on a trade in one kingdom, belonging to the crown of *Great Britain*, and comes over to another, a commiſſion may be Traders out of the kingdom.

taken out by a creditor in the place where he then happens to be, as he has traded to this kingdom, and contracted debts here. 1 *Atk.* 82.

Officer, &c. Lord *Hardwicke* ſaid, that if an officer in the army ſhould become a bankrupt, he ſhould have no doubt but he had a power to lay his hands upon his pay, for the benefit of his creditors. 1 *Atk. Rep.* 214.

Feme covert in London, &c. A feme covert in *London*, being a ſole trader, according to the cuſtom is liable to a commiſſion of bankrupt. *Com. Dig.* 521. 2 *Black. Com.* 477. *cites La Vie* v. *Philips*, *Mich.* 6 *Geo.* 3. *B. R.*

Petition to ſuperſede a commiſſion of bankrupt upon a ſuggeſtion of the party's being a married woman at the time the commiſſion iſſued, and the wife of the petitioner; lord chancellor *Hardwicke* ſaid, that as the party was admitted to be the daughter of a freeman of *London*, and appeared plainly to be a ſeparate trader, by the cuſtom of *London* ſhe was clearly liable to a bankruptcy, notwithſtanding her coverture. *Atk. Rep.* 206.

Barriſter, &c. A gentleman at the bar, who had a colliery and dealt in coals, at *Durham*, was held ſuch a trader as might be a bankrupt. *Stra.* 514. 8 *Mod.* 46, 47.

Peers, &c. A peer or a member of the houſe of commons, if they will trade, are liable to a commiſſion of bankrupcy. By lord *Hardwicke*. 1 *Atk. Rep.* 201. See the ſtat. 4 *Geo.* 3. *c.* 33. in page 303.

Pawnbrokers, &c. Lord *Hardwicke* inclined to think that pawnbrokers are within the ſtatutes of bankrupts, and ſeem particularly included in the general word *broker* in ſect. 39. of ſtat. 5 *Geo.* 2. (See page 286); and ſo is a public officer, as an exciſeman, &c. if he will trade. 1 *Atk.* 206.

Phyſician, &c. Phyſicians may be bankrupts. *Dav.* 9.

Scrivener, &c. A ſcrivener may be a bankrupt. *Stat.* 21 *Jac.* 1. *c.* 19. *ſect.* 2. See page 257. See 2 lord *Raym.* 851.

The reaſon that ſcriveners, (who were more numerous formerly than in later days, *Atk.* 218) were included by the above act of *Jac.* 1. was for the relief of their creditors; whom they have otherwiſe more opportunities of defrauding than any other ſet of dealers; and they are properly to be looked upon as traders, ſince they make merchandize of money, in the ſame manner as other merchants do of goods and other moveable chattels. 2 *Black. Com.* 475.

Who may not be bankrupts. Adventurers in the *Eaſt India* or *Guinea* Company, or in the Royal fiſhing trade, are not liable to the bankrupt laws, on account of their ſtock in the ſaid companies or trades. *Stat.* 13 & 14 *Car.* 2. *c.* 24. *ſect.* 3. See page 263.

No member of the bank of *England* ſhall be deemed a bankrupt on account of his ſtock, or be liable to any of the ſtatutes made againſt bankrupts. 7 & 8 *Will.* 3. *c.* 31. 8 & 9 *Will.* 3. *c.* 20. *ſect.* 47. 5 *Ann. c.* 13. 7 *Ann. c.* 7. 3 *Geo.* 1. *c.* 8. *ſect.* 43, &c. &c. Buying and ſelling bank ſtock, or other government ſecurities will not make a man a bankrupt, they not being goods, wares, or merchandizes within the intent of the ſtatute, by which a profit may be *fairly* made. 2 *P. Will.* 308. 2 *Black. Com.* 476.

No member of the *Eaſt-India* company ſhall be a bankrupt, on accounts of his ſtock in the ſaid company. *Stat.* 9 & 10 *Will.* 3. *c.* 44. Nor any member

member of the *South-ſea* company, on account of his ſtock in the ſaid company. *Stat.* 9 *Ann. c.* 21. 3 *Geo.* 1. *c.* 9. 5 *Geo.* 1. *c.* 19. 6 *Geo.* 1. *c.* 4. 8 *Geo.* 1. *c.* 21. *ſect.* 12. Nor any member of the *Royal Exchange*, or *London Inſurance Companies*. *Stat.* 6 *Geo.* 1. *c.* 18. *ſect.* 10.

No farmer, grazier, or drover of cattle, or any receiver general of taxes ſhall be deemed a bankrupt. *Stat.* 5 *Geo.* 2. *c.* 30. *ſect.* 40. See page

What are acts of bankrutcy.

The particular acts of bankruptcy appear from the ſeveral ſtatute s to be, 1. To depart the realm. 2. To begin to keep his houſe. 3. To abſent himſelf. 4. To take ſanctuary. 5. To ſuffer himſelf willingly to be arreſted for any debt, or other thing, not grown or due for money delivered, wares ſold, or any other juſt or lawful cauſe, or good conſideration or purpoſes. 6. To ſuffer himſelf to be outlawed. 7. To yield himſelf to priſon. 8. To depart from his dwelling houſe, to the intent or purpoſe to defraud or hinder a juſt creditor or creditors of his or their juſt debt or duty. 9. Willingly or fraudulently to procure himſelf to be arreſted, or his goods, money, or chattels to be attached or ſequeſtred. 10. To make any fraudulent grant or conveyance of his lands, tenements, goods, or chattels, to the intent, or whereby his creditors ſhall and may be defeated or delayed for the recovery of their juſt debts. (See Stat. 13 *El. c.* 7. *ſect.* 1. in page 245. 1 *Jac.* 1. *c.* 15. *ſect.* 2. in page 251.) 11. Obtaining any protection, otherwiſe than being lawfully protected by privilege of parliament. 12. Preferring unto his majeſty, or unto any of the king's courts, any petition or bill againſt his creditors, or any of them, thereby deſiring or endeavouring to compel them to accept leſs than their juſt and principal debt, or to procure time or longer days of payment, than was given at the time of their original contract. 13. Being arreſted for debt, ſhall, after ſuch arreſt, lie in priſon two months upon that or any other arreſt, or detention for debt. 14. Being arreſted for a 100*l.* or more of juſt debt, ſhall, after ſuch arreſt eſcape out of priſon. (See Stat. 21 *Jac.* 1. *c.* 19. *ſect.* 2. in page 257—8.) 15. Paying to the petitioning creditor, or delivering to him goods or ſecurity for his debt, whereby he ſhall have more in the pound, than the other creditors. (See Stat. 5 *Geo.* 2. *c.* 30. *ſect.* 24. in page 279.) 16. Neglecting to make ſatisfaction for any juſt debt to the amount of 100*l.* within two months after ſervice of the legal proceſs, for ſuch debt, upon any trader having privilege of parliament. See Stat. 4 *Geo.* 3. *c.* 33. *ſect.* 1 in page 303.

1. To depart the realm.

By this a man withdraws himſelf from the juriſdiction and coercion of the law, with intent to defraud his creditors. 2 *Vern.* 162.

A merchant departs the realm to merchandize, and becomes indebted, and to avoid arreſts defers his return; this doth *tantamount* to a departing of the realm. *Read. Stat. law* 186.

A *capias de excommunicato capiendo* is awarded againſt one, who, for fear of arreſt, departs the realm, he is no bankrupt. *Com. Dig.* 523.

In the caſe of one *Woodier*, a mercer on *Ludgate-hill*, againſt whom his going beyond ſea being given in evidence, it was inſiſted that ſhewing *quo animo* it was done, (*viz.* on account of having killed his wife) it could

not be conſtrued an act of bankruptcy; but it appearing that his creditors were thereby in fact prevented from recovering their debts, chief juſtice *Reeves* held it was; but if that fact had not come out, it would have been otherwiſe, cited by Sir *John Strange* (late maſter of the rolls) in *Degols* v. *Ward*, *Hil.* 12 *Geo.* 2. *B. R. Bur. Rep.* 471, 484.

2. To begin to keep his houſe.

Keeping in his *own* houſe, privately, ſo as not to be ſeen or ſpoken with by his creditors, except for juſt and neceſſary cauſe, is likewiſe conſtrued to be an intention to defraud his creditors by avoiding the proceſs of the law. 2 *Black. Com.* 478.

If a tradeſman conceals himſelf, or abſconds within his houſe, with deſign to delay or defraud his creditors, it makes him bankrupt, though the concealment be only for little time, or he be ſued only as ſurety for another. *Palm.* 325. 2 *Show. Rep.* 523.

Keeping houſe to avoid an attachment for not delivering of Goods, *no debt* being *due*, is not an act of bankruptcy, but otherwiſe for fear of an attachment in *Chancery*. *Atk. Rep.* 196, 240.

If a man denies himſelf when he knows that a creditor comes for his debt, he will be a bankrupt. *Com. Dig.* 523.

If a trader, upon notice of proceſs iſſued forth againſt him, keeps his houſe to ſecure himſelf from the arreſt, and after goeth forth again, and then, upon like notice, keeps his houſe, and then again goeth forth, this bringeth him not within the ſtatutes of bankruptcy, becauſe he uſes to go at large, and his policy will not always prevent the ſerving of proceſs on him, for he may be met withal unwittingly one time or other. *Cro. Eliz.* 13.

3. To abſent himſelf.

If a man has no conſtant dwelling, if he abſents himſelf from his uſual abode, he ſhall be adjudged bankrupt. *Com. Dig.* 523.

A merchant indebted departs the realm to merchandize, and having loſs by tempeſt returns no more, this is not a departing, but an abſenting himſelf. *Stone* 123, 124.

4. To take ſanctuary.

Taking ſanctuary is when a perſon takes refuge in any place in which the law cannot be ſo readily executed upon him, and to delay the payment of his debts to his creditors, *viz.* within the verge of the court, or any other particular place of refuge: but it ſeems that where a perſon hath lived and reſided within the verge of the court for many years, that ſuch reſidence cannot be deemed an act of bankruptcy, notwithſtanding a perſon ſo reſident has been declared bankrupt, and the commiſſion has even appeared in the *Gazette*; but *minus juſte*. *Green* 45.

5. To ſuffer himſelf willingly to be arreſted for any debt, or other thing, not grown or due for money delivered, wares ſold, *&c.*

Suffering himſelf to be arreſted, without juſt and lawful cauſe, is likewiſe deemed an attempt to defraud his creditors; and therefore, if he becomes a priſoner in the *Fleet* or *Marſhalſea*, he will be a bankrupt. Or if he cauſe a voluntary, or feigned action to be commenced againſt him. So, where the party procures himſelf to be arreſted upon a *Sham debt*, that by the ſtatute of *Elizabeth*, is immediately an act of bankruptcy. *Green* 46.

But

But an outlawry in *Ireland* does not make one bankrupt, nor an outlawry here, unleſs it be with intent to defraud creditors, *as it ſeemeth*, or, if it be reverſed before the commiſſion iſſues; or, reverſed, for default of proclamations after the commiſſion. *Green* 47.

6. To ſuffer himſelf to be outlawed.

This is to be intended a voluntary yielding, and not when a man is impriſoned for non-payment of a fine, or any refractory carriage; for although the act which cauſeth the impriſonment be voluntary, yet the impriſonment itſelf is involuntary. *Green* 47. *Billingh.* 95. *Good.* 25.

7. To yield himſelf to priſon.

B. was arreſted for twenty-eight pounds, and though he had money ſufficient to pay the debt, yet choſe rather *to go to priſon*, in order as he declared, to force his creditors to come to a compoſition; and by lord chancellor *Talbot* this is an act of bankruptcy, within 1 *Jac.* though without ſuch intent yielding himſelf to priſon was no act of bankruptcy, unleſs he lay there two months. 7 *Vin. Abr.* 61, 62.

Being denied to a creditor is only evidence of an act of bankruptcy, abſconding is the material part of it. *Green* 48. Lord *Mansfield* ſaid; if a trader leaves his houſe, circumſtances may ſhew it was not to abſcond.

8. To depart from his dwelling houſe, to the intent or purpoſe to defraud or hinder a juſt creditor, &c. Green 48—50. Philips and Peck v. Sheriff of Eſſex, at the ſittings in C. P. in London, after term, before Eyre Ch. J.

This was an action againſt the defendant for a falſe return to two *fieri facias's*, and on evidence the caſe appeared to be thus, *viz.* The plaintiff ſent into *Eſſex* a writ on meſne proceſs, and a *fieri facias* againſt one *Ward*, and both writs were delivered to the ſheriff, and *Ward* was arreſted by virtue of the writ; about two hours before the ſheriff took his goods in execution by means of the *fieri facias*; ſoon after that arreſt, and before his goods were taken in execution, he was carried to *Colcheſter* to the officers houſe, and deſired the officers that they would not let any one know that he was there; and on being told the next day, which was *Sunday*, that *Finch*, one of his creditors aſked after him, he prayed, for God's ſake, dont let him know that I am at your houſe; and upon *Finch*'s coming the next day to enquire after him, he then deſired of the officers, that *Finch* might be permitted to ſee him. In about a week after, the ſecond *fieri facias* was executed on his goods; but the ſheriff, ſuppoſing that he became bankrupt from the firſt arreſt on the meſne proceſs, delivered the effects to the aſſignees of the commiſſion of bankruptcy taken out againſt *Ward*, and returned *nulla bona* to both the writs of *fieri facias*. Upon hearing the evidence, *Eyre* chief juſtice of the *Common pleas*, ordered the act of king *Ja.* 1. *c.* 15. *ſect.* 1, 2. which deſcribes a bankrupt, to be read, and then ſaid, that between the time of executing the two writs of *fieri facias*, he had been guilty of an act of bankruptcy, for that he had withdrawn himſelf from the place of his habitation, and had abſented; but ſerjeant *Darnell* ſaying, that that muſt be done with a deſign to defraud his creditors, the chief juſtice told him his very abſenting himſelf was ſufficient evidence of the fraud deſigned. Then ſerjeant *Eyre* ſaid, it muſt be a voluntary abſenting of himſelf, and not by means of an arreſt: and the chief juſtice ſaid, ſo it was here, for that it appeared on evidence, (as indeed it did) that on the *Monday* after the arreſt, he was diſcharged out of cuſtody on the writ of meſne proceſs, and from that time he ſecretly withdrew. Therefore the chief juſtice told the jury, that as here appeared not to be any act of

bankruptcy committed by *Ward* till after the time of the firſt execution, upon that return they muſt find for the plaintiff, and that ſince he had between the time of the two executions ſo behaved himſelf as to make himſelf bankrupt, by which the intereſt in his goods was veſted in the aſſignees; they ought on the ſaid return to find for the defendant; which they did accordingly.

2 Stran. 809. Trin. 2 Geo. 2. Malyn et al' v. Eyloe, at Guildhall before Raym. Ch. J.

On 28th of *November Hall* rode out of town, and returned in the evening, before which a bailiff had been at his ſhop to arreſt him: the next morning he ſent for the bailiff, and told him he went out in order to get the term of the plaintiff, and now the return of the writ was out, if they would take out a new writ he would give bail, which was done accordingly. And this was held to be an act of bankruptcy within 1 *Jac.* 1. *c.* 15. *ſ.* 2. which ſpeaks of "departing from his houſe with intent, and whereby his creditors may be defeated or delayed from recovering their juſt debts."

Atk. Rep. 196.

Lord chief juſtice *Willes* was of opinion, that a perſon's abſconding to avoid an attachment upon an award for non-delivery of goods purſuant to an award, was not an act of bankruptcy, becauſe it was not within the words of the ſtatute of 1 *Jac.* 1. *c.* 15. *ſ.* 2. which makes it an act of bankruptcy in a perſon to depart from his dwelling-houſe, in order to avoid the payment of a *juſt and true debt only*, and *not* the *delivery of goods*, for *that* is a *duty only*; and lord chancellor *Hardwicke* declared that he thought the determination of lord chief juſtice *Willes* a very right one, and that he was very well warranted by the words of the ſtatute, in the diſtinction he made between *abſconding* to *avoid* a *debt*, and *abſconding* to *avoid* a *duty only*.

9. Willingly or fraudulently to procure himſelf to be arreſted, or his goods, money, to be attached, *&c.*

Suffering this to be done by any legal proceſs, is another plain and direct endeavour to diſappoint his creditors of their ſecurity. 2 *Black. Com.* 478.

But he is not a bankrupt if his goods are attached, or ſequeſtered without his procurement; as upon an attachment out of a court for his default, or laches; ſo, if *A.* has a rectory impropriate, and the tithes are ſequeſtered for not repairing the chancel. *Com. Dig.* 523.

10. To make any fraudulent conveyance of his lands, tenements, *&c.*

And therefore, if he makes a grant or conveyance fraudulent within ſtat. 13 *El. c.* 5. or ſtat. 27 *El. c.* 4. it makes him bankrupt, and if he makes a fraudulent grant, *&c.* he will be bankrupt, though he afterwards appears publickly upon the Exchange, *&c.* *Green* 52.

Making ſuch a grant, *&c.* to a friend, or ſecret truſtee, of his tenements or goods, is an act of the ſame ſuſpicious nature as the laſt. 2 *Black. Com.* 478.

A conveyance by a trader of his whole ſubſtance, to a particular creditor, himſelf continuing in poſſeſſion, and acting as viſible owner, though the conveyance be made by way of ſecurity, and for valuable conſideration, is fraudulent and a ſpecific act of bankruptcy within the above clauſe. By lord *Mansfield*. *Bur. Rep.* 484, 829.

If a bankrupt convey all to a favourite and friendly creditor, juſt before committing an act of bankruptcy, the whole power of ſelling his effects,

effects, calling in his debts, and ſettling his accounts, muſt be in ſuch ſingle and particular creditor; he muſt have a right even to the cuſtody of the books and papers; whereby the worſt and moſt dangerous priority would prevail, depending merely upon the unjuſt or corrupt partiality of the bankrupt. By lord *Mansfield*. *Bur. Rep.* 477.

Such preference is a fraud upon the whole bankrupt law, and would defeat the two main objects it has in view; to wit, the management of the bankrupt's eſtate, and an equal diſtribution among his creditors. By lord *Mansfield*. 4 *Bur. Rep.* 476, 484, 829.

A caſe happened, where a conveyance calculated to poſtpone one creditor to the reſt was held an act of bankruptcy. It came on before lord *Hardwicke* the late lord chancellor at *Lincoln's Inn Hall*, 31ſt *July* 1755. One *Gayner*, a trader, had made an aſſignment, on the 7th of *June* 1755, of all his effects, goods, ſtock in trade, and book debts, (except houſhold goods, watches, plate, bills of exchange, inland bills, promiſſory notes, and caſh then by him) to truſtees, in truſt to pay themſelves and all the reſt of his creditors, except *Ford* the petitioner. But the truſtees declined to act under this aſſignment. He executed another on the 9th of *June* 1755; wherein the truſtees were to pay themſelves, and all the creditors mentioned in a ſchedule; (in which ſchedule the petitioner was not included:) and in this ſecond aſſignment, a large parcel of ginger, as well as the things above-mentioned, were excepted. The petitioner inſiſted that he alone could chooſe aſſignees; ſince the other creditors claimed under the aſſignment. Lord *Hardwicke* was clear, "that the executing the deed on the 9th of *June* was an act of bankruptcy." And all that heard his determination were of the ſame opinion: and every body concerned acquieſced in it. Whereupon the creditors mentioned in the ſchedule, conſented to wave all benefit or advantage under the aſſignment; and all proved their debts, in order to receive an equal dividend with the petitioner: and the creditors proceeded to a choice of new aſſignees. The framers of this deed executed by *Gayner*, took for granted, "that if it had been a conveyance of all his effects, it muſt be bad;" and therefore they colourably excepted parts. But the contrivance did not prevail, even ſo far as to bear an argument; or to be thought by any body worthy of a trial. There is a great difference between the conveyance of all, and of a part; a conveyance of a part may be public, fair and honeſt; as a trader may ſell, ſo he may openly transfer many kinds of property, by way of ſecurity. But a conveyance of all muſt either be fraudulently kept ſecret, or produce an immediate abſolute bankruptcy. It has been argued, "that after a reſolution taken by a trader, to commit an act of bankruptcy, the trader ſo reſolving to become bankrupt, might lawfully prefer a juſt creditor by conveying part of his effects, to ſatisfy that creditor's debt. It is not neceſſary to determine that queſtion in this cauſe; for here the conveyance is of all. And therefore lord *Mansfield* would only ſay, that no ſuch propoſition was yet eſtabliſhed; much leſs, in the extent whereto it had been urged; but he (*Bur. Rep.* 484, 831.) ſaid afterwards, that a trader might *pay* a particular creditor, or he might *mort-*

Bur. Rep. 477, 478.

gage

gage a part of his eſtate or effects (at leaſt) to a particular creditor, provided he delivered poſſeſſion at the ſame time.

Bur. Rep. 827. *L.* a trader, being really indebted to *W.* (in about 18,408 *l.*) ſent for *W.* and told him; "he could not ſtand his ground," and propoſed to ſecure him. Accordingly, he executed a general aſſignment to *W.* of every thing that he had in the world: but after payment of *W.*'s debts, it was to be in truſt for *L.* himſelf, as to the reſidue. A defeazance in a ſeparate deed was ſoon after executed, making the aſſignment void, upon payment of all the money due to *W.* (who had been concerned with *L.* in circulating notes, many of which were outſtanding:) But neither the aſſignment nor defeazance particularly liquidated how much money was due from *L.* to *W.* The deed of aſſignment recited *L.*'s being "obliged, upon urgent and neceſſary buſineſs, to leave *London*;" and that he could not raiſe money ſoon enough to anſwer all the demands that *W.* had upon him." There was no counter-part of this deed: And the original remained in the keeping of *L.* the aſſignor. No poſſeſſion was delivered: only *L.* gave a letter of attorney to *B.* his own clerk, (a perſon privy to the whole,) to collect, receive, diſpoſe, *&c.* the goods ſtill continuing in *L.*'s houſe. No notice was given to *L.*'s debtors. It was reſolved by the court of *King's Bench*, that this deed alone was itſelf an act of bankruptcy.

11. Obtaining any protection, otherwiſe than being lawfully protected by privilege of Parliament.

Procuring any protection, not being himſelf privileged by parliament, in order to ſcreen his perſon from arreſts, is alſo an endeavour to elude the juſtice of the law. 2 *Black. Com.* 478.

But if any one be protected as the king's ſervant, it does not make him bankrupt. *Skin.* 21.

Traders in the ſervice of ambaſſadors are not privileged. See page 264.

12. Preferring petitions to compel creditor to accept leſs than his debt, *&c.*

Theſe are an acknowledgment either of his poverty or his knavery. 2 *Black. Com.* 478. If the creditors, upon requeſt, enlarge the time for payment, it does not make the party bankrupt. *Com. Dig.* 524. But theſe ſort of petitions or bills will not *now lie*. *Lex mercat. rediviv.* 489.

13. Being arreſted for debt ſhall, after his arreſt, lie in priſon two months upon that or any other arreſt or detention.

The inability to find bail, in order to obtain his liberty, argues a ſtrong deficiency in his credit, owing either to his ſuſpected poverty, or ill character; and his neglect to do it, if able, can ariſe only from a fraudulent intention; in either of which caſes it is high time for his creditors to look to themſelves, and compel a diſtribution of his effects. 2 *Bur. Rep.* 819. 2 *Black. Com.* 478, 479.

14. Being arreſted for 100*l.* or more of juſt debt, ſhall, after ſuch arreſt, eſcape out of priſon.

No man would break priſon, that was able and deſirous to procure bail; which brings it within the reaſon of the laſt caſe. 2 *Black. Com.* 479.

Lord *Mansfield* held, that a perſon being permitted, at his own deſire, to go out of the county, in which he was arreſted, was not ſuch an eſcape, as that he ſhould be thereby rendered a bankrupt and a criminal; for the act clearly intended ſuch an eſcape made by a priſoner, as ſhewed that he meant to

to run away, and thereby defeat his creditors; but that this was not such an escape, and that certainly a man should not be made a criminal, where he had not the least criminal intention to disobey any law whatsoever. That it was no escape at all in the sense of the act of parliament; he remained substantially in custody notwithstanding his being carried into another county. *Bur. Rep.* 339.

15. Paying, &c.
16. Neglecting, &c.

See page 279. *sect.* 24.
See *Stat.* 4 *Geo.* 3. *c.* 33. *sect.* 1. in page 303.

For more learning on this subject, see a general system of the laws concerning bankrupts, *and Green*'s Spirit of the bankrupt laws.

Banks.

BANK (banc, *Sax.*) is the earth rising on each side of a water, or river; or any heap of earth piled up. *Johns.*

Stat. 22 *Hen.* 8. *c.* 11. [*A. D.* 1530. *intituled.*] "An act concerning *Powdike* in marsh-land."

"Wheretofore this time divers evil-disposed persons, of their perverse and evil dispositions, maliciously, at divers and sundry times have cut, cast down, and broken up divers parts of the dike called the new powdike in marsh-land in the county of *Norfolk*, and the broken dike, otherwise called *Oldfield* dike, by marsh-land in the isle of *Ely* in the county of *Cambridge*; by reason whereof, as well by the great abundance of salt water, as also by the course of the fresh water entring and coming into and by the said parts of the said ditches so broken and cast down, the ground and pastures within the country of marsh-land in the counties aforesaid, have been divers and many times drowned and surrounded with the waters aforesaid, so that no profit thereof might be taken by the owners and occupiers of the said ground and pastures within marsh-land aforesaid; by the drowning whereof the said owners and occupiers of the said ground, and the inhabitants within said marsh-land, and the level of the same, at many and sundry times have been not only put to importunate charges and expences, to their extreme damages and costs, but also, to their great undoing, have lost much of their cattle and beasts, then being and pasturing upon and within marsh-land aforesaid, to their great damage and loss, and to the great decay of the common weal of the countries adjoining to the same; and also by reason of the same waters much people have been drowned in their beds within their houses, and have lost the most part of their goods being within the same: (2) For the reformation whereof Be it ordained, enacted, and established by the king our sovereign lord, by the assent of the lords spiritual and temporal, and the commons, in this present parliament

2 & 3 Ph. & M. c. 12.

Cutting down or breaking up dikes in marsh-land is felony.

ament aſſembled, and by the authority of the ſame, That every ſuch perverſe and malicous cutting down and breaking up of any part or parts of the ſaid dikes, or of any other bank, being parcel of the rind and uppermoſt part of the ſaid country of marſh-land aforeſaid, made for the defence and ſalvation of the ſame country of marſh-land, at every time and times from henceforth by any perſon or perſons committed and done, otherwiſe than in working upon the ſaid banks or dikes, for the repairing, fortifying and mending of the ſame, be taken, reputed, and adjudged felony; and that the offenders and doers of the ſame, and every of them, be adjudged and reputed felons. (3) And that the juſtices of the peace of the ſaid counties of *Norfolk* and *Cambridge*, within the ſaid iſle, at every of their ſeſſions within the ſame iſle and counties to be kept, by the authority aforeſaid have full power to cauſe inquiry to be made of every ſuch offence, ſo at any time, in form aforeſaid, hereafter to be committed and done, and to award like proceſs againſt every of the ſaid offenders, with like judgment and execution of the ſame, if they or any of them be thereof found guilty by verdict or otherwiſe, as the ſaid juſtice hath uſed and accuſtomed to do upon other felonies, being felony at the common law."

Juſtices of the peace to inquire of offenders, and award proceſs, &c.

Stat. 10 *Geo.* 2. *c.* 52. [*A. D.* 1737.] *made, among others purpoſes*, "For the more effectual puniſhment of perſons removing any materials uſed for ſecuring marſh or ſea walls or banks."

Sect. 5. "And whereas it frequently happens, that many idle and diſorderly perſons employed in fiſhing-boats and others, reſiding near the ſea-coaſts, do unlawfully and maliciouſly cut off, draw up, burn, and deſtroy the piles, which are drove into the marſh, or ſea walls and banks, whereby the chalk and other materials uſed for ſecuring the ſaid walls and banks fall away, and oftentimes take away the ſaid chalk and other materials uſed for that purpoſe, and thereby frequent inundations happen to the lands lying within the ſaid walls and banks, to the great loſs and damage of the owners and occupiers of the ſaid lands: For remedy thereof, be it therefore further enacted by the authority aforeſaid, That if any perſon or perſons ſhall at any time or times hereafter unlawfully cut off, draw up, or remove and carry away any piles, chalk, or other materials, which are, or at any time hereafter ſhall be driven into the ground and uſed for the ſecuring any marſh, or ſea walls, or banks, in order to prevent the lands lying within the ſame from being overflowed and damaged, it ſhall and may be lawful to and for any one or more of his majeſty's juſtices of the peace reſiding near the place where the ſaid offence or offences ſhall be committed, and ſuch juſtice or juſtices is and are hereby reſpectively authorized and required, upon complaint or information upon oath of ſuch offence (which oath or oaths ſuch juſtice or juſtices is and are hereby impowered to adminiſter) to ſummon the party or parties ſo complained of, or to iſſue his or their warrant or warrants to apprehend and bring before him or them the perſon or perſons ſo accuſed, complained of, or ſuſpected; and upon his, her, or

Piles, chalk, &c. uſed for the ſecurity of marſhes, not to be removed.

or their appearance, or neglect to appear, to proceed to examine the matter of fact with which he, ſhe, or they are charged, and upon due proof thereof made, either by confeſſion of the party or parties ſo accuſed, or upon the oath or oaths of one or more credible witneſs or witneſſes, to determine the ſame, and to convict the offender or offenders; and every perſon offending herein, and being thereof convicted as aforeſaid, ſhall forfeit and pay the ſum of twenty pounds, one moiety thereof to the informer, and the other moiety to the overſeer of and for the uſe of the poor of the pariſh wherein ſuch offence ſhall be committed; the ſame to levied by diſtreſs and ſale of the offender's goods and chattels, together with the charges of ſuch diſtreſs and ſale, rendring the overplus (if any be) to the owner or owners thereof; and for want of ſufficient diſtreſs the ſaid juſtice or juſtices are hereby required to commit the perſon or perſons convicted as aforeſaid to the houſe of correction, there to remain and be kept at hard labour for the ſpace of ſix months."

on forfeiture of 20l to be levied by diſtreſs,

or impriſonment for ſix months;

Stat. 4 *Geo.* 3. *c.* 12. *Made, among other purpoſes,* "for puniſhing perſons who ſhall damage or deſtroy any banks, floodgates, ſluices, or other works belonging to the rivers and ſtreams made navigable by act of parliament."

Sect. 5. "And whereas the laws now in being are not ſufficient for the preſervation of the banks, flood-gates, ſluices, and other works, belonging to rivers and ſtreams made navigable by act of parliament, and the maintaining the navigation of ſuch rivers and ſtreams; be it therefore enacted by the authority aforeſaid, That from and after the paſſing of this act, if any perſon or perſons ſhall wilfully or maliciouſly break, throw down, damage or deſtroy any banks, flood-gates, ſluices, or other works, or open or draw up any flood-gate or flood-gates, or do any other wilful hurt or miſchief to any ſuch navigation, ſo as to obſtruct, hinder, or prevent, the carrying on, compleating, ſupporting, or maintaining ſuch navigation; every ſuch perſon or perſons ſhall be adjudged guilty of felony; and the court before whom ſuch perſon or perſons ſhall be tried and convicted, ſhall and hereby have power and authority to order ſuch perſon or perſons to be tranſported for ſeven years."

Perſons who ſhall damage any banks, flood gates, or other works belonging to rivers, &c. made navigable by act of parliament, ſhall be adjudged guilty of felony, and be tranſported for 7 years.

See *Stat.* 6 *Geo.* 2. *c.* 27. under title **Black Act.** And ſee **Navigation, Rivers.**

Barratry.

A Barrator, or barretor, is derived by ſome, ſays lord *Coke*, from the *French* word *barrateur*, which ſignifies a *deceiver*; others derive this word, from the *Latin* word *baratro*, which ſignifieth a vile knave, or unthrifty perſon; others, becauſe barrators maintain pleas at *bars* in courts, or ſtir cauſes of ſuits, derive this word from two legal words, namely, *barra*, which ſignifies the *bar* in courts, where cauſes are debated, *&c.* and *rettum*, which, as appears in the writ *de homine replegiando*, in the *Regiſter*, ſignifies a crime or offence; and becauſe a common barrator is principally an offender in moving or maintaining of quarrels at bars, *viz.* in courts, or in the country, which are cauſes of ſuits in courts, he is called a barrator, or bar offender. 8 *Co. Rep.* 37.

A barrator, or barretor, is a common mover and exciter or maintainer of ſuits, quarrels, or parties either in courts or elſewhere in the country; in courts, as in courts of record, or not of record, as in the county, hundred, or other inferior courts in the country, in three manners; 1ſt, In the diſturbance of the peace; 2dly, in taking or keeping poſſeſſions of lands in controverſy, not only by force, but alſo by ſubtlety and deceit, and moſt commonly in ſuppreſſion of truth and right; 3dly, by falſe inventions, and ſowing of calumniations, rumours and reports, whereby diſcord and diſquiet may grow between neighbours. *Co. Lit.* 368. *a. b.*

As this offence conſiſts in all kinds of diſturbances of the peace, and the ſpreading of falſe rumours and calumnies, whereby diſcord and diſquiet may grow among neighbours, it is not material whether the ſuits commenced be in a court of record or not, or whether thoſe quarrels relate to a diſputed title of poſſeſſions or not. *Co. Lit.* 368. *a. b.* 8 *Co.* 36. *b.* 1 *Hawk. P. C.* 243. 3 *Inſt.* 175.

But if a man proſecutes an infinite number of ſuits, which are his own proper ſuits againſt others, yet he ſhall not be a barretor by this; for if they are falſe and groundleſs, the defendants ſhall have coſts againſt him. 1 *Rol. Abr.* 335. But by 1 *Hawk. P. C.* 243. if ſuch ſuits are merely groundleſs, and brought only with a deſign to oppreſs the defendants, ſuch a man may as properly be called a barrator, as if he had ſtirred up others to bring them. See 3 *Mod.* 98. 8 *Co.* 36. *b.*

An attorney cannot be deemed a barrator in reſpect of his maintaining another in a groundleſs action, to the commencing whereof he was no way privy. 1 *Hawk. P. C.* 243.

Alſo it ſeems clear, that no man can be a barrator in reſpect to one act only; for every indictment for ſuch crime muſt charge the defendant with being a *common barrator*. 1 *Hawk. P. C.* 243.

A feme covert cannot be indicted as a common barrator. 2 *Rol. Abr.* 39. But this opinion Mr. ſerjeant *Hawkins* ſays is juſtly queſtionable; for ſince a feme covert is capable of exciting quarrels, (in the frequent repetition

petition whereof the notion of barratry ſeems to conſiſt) as if ſhe were ſole, why ſhould ſhe not as properly be indictable for it? 1 *Hawk. P. C.* 243.

By the ſtatute 34 *Ed.* 3. *c.* 1. [*A. D.* 1357.] it is enacted, "That in every county ſhall be aſſigned for the keeping of the peace one lord, and with him three or four of the moſt worthy of the county, *&c.* and that they ſhall have power to reſtrain offenders, rioters, and all other barrators; and to purſue, arreſt, take and chaſtiſe them, according to their treſpaſs or offence; and ſo cauſe them to be impriſoned and duly puniſhed according to the law and cuſtoms of the realm, and according to that which to them ſhall ſeem beſt to do by their diſcretions and good adviſement, *&c.*" How offenders are to be proceeded againſt.

It ſeemeth from theſe words, that juſtices of peace (as ſuch) have cognizance of barratry without any other commiſſion; but quære; for the contrary opinion, ſays Mr. ſerjeant *Hawkins*, ſeems to have been holden in *Rolle*'s Reports. 1 *Hawk. P. C.* 244. But Mr. ſerjeant *Hawkins* ſays in another place, namely, 2 *Hawk. P. C.* 40. that juſtices of the peace in ſeſſions, by virtue of the ſaid ſtatute 34 *Ed.* 3. *c.* 1. ſeem to have a juriſdiction over barretors and ſuch like offenders, whether they be mentioned in their commiſſion or not. He cites *Cro. Jac.* 32. *Yelv.* 40. *cont.* 2 *Rol. Rep.* 151.

A juſtice of peace may arreſt any common barretor, and put him in ward till he finds ſecurity for his good behaviour for the future, *&c. Keilw.* 41. *in pl.* 6 *per Keble*, and agreed by the court. *Mich.* 7 *H.* 7. *Anon'.*

Juſtices of peace have authority to enquire and hear this offence, without any ſpecial commiſſion of oyer and terminer, and their commiſſions are equal to that purpoſe. *Cro. Jac.* 32. *pl.* 4. *Trin.* 2 *Jac.* 1. *B. R. Barnes* v. *Conſtantine.*——*Yelv.* 46. *S. C.* and *S. P.* held accordingly.——*Sid.* 334. *pl.* 20. *Paſch.* 19 *Car.* 2. *B. R.* the ſame point admitted in the caſe of the *King* v. *Browne.*——2 *Keb.* 212. *pl.* 49. and 226. *pl.* 81. *S. C.* and *S. P.* admitted.

It ſeems clear, that no general indictment of this kind, charging the defendant with being an oppreſſor and diſturber of the peace, and ſtirrer up of ſtrife among neighbours, is good, without adding the words *common barrator*, which is a term of art appropriated by the law to this purpoſe. 1 *Hawk. P. C.* 244. Alſo it ſeemeth to be certain, that an indictment of barratry concluding *cont' formam ſtatuti* is good, though no ſtatute be made directly againſt it, but only for the puniſhment of it, ſuppoſing it an offence at common law. 1 *Hawk. P. C.* 244.

Alſo it hath been holden that an indictment of this kind may be good, without alledging the offence at any certain place; becauſe from the nature of the thing, conſiſting in the repetition of ſeveral acts, it muſt be intended to have happened in ſeveral places; for which cauſe it is ſaid that a trial ought to be by a jury from the body of the county. 1 *Hawk. P. C.* 244. But it hath been reſolved, that ſuch an indictment is not good, without concluding *againſt the peace*; for this is an eſſential part of it. 1 *Hawk. P. C.* 244.

Alſo it ſeemeth to be the ſettled practice at this day, not to ſuffer the proſecutor to go on in the trial of an indictment of this kind, without giving the defendant a note of the particular matters which he intends

to prove againſt him; for otherwiſe it will be impoſſible to prepare a defence againſt ſo general and uncertain a charge, which may be proved by ſuch a multiplicity of different inſtances. 1 *Hawk. P. C.* 244.

How puniſhed.

If they are common perſons, the uſual puniſhment is by fine and impriſonment, and alſo by binding them to their good behaviour; but if they are of any profeſſion relating to the law, they may be farther puniſhed by being diſabled to practice for the future. 1 *Hawk.* 244.

An attorney, upon barretry being proved againſt him by divers affidavits read in court, had judgment to be put out of the roll of attornies, and be fined 50*l.* and turned over the bar, and ſtand committed. *Styl.* 483. *Trin.* 1655. *B. R. Alwin*'s caſe.

H. was indicted at the ſeſſions, and judgment was there given againſt him, that he was *a promoter of ſuits, and a common oppreſſor of his neighbours*, and was fined 200*l.* The juſtices all agreed that the indictment was not good without the word *barretor*, and their great reaſon was becauſe all the precedents are ſo, and therefore the judgment was reverſed; but they ſaid that the finding him to be a common oppreſſor of his neighbours, had been good evidence to find him guilty of barretry; and therefore they bound *H.* to his good behaviour, and willed that the country indict him again with the word *barretor*. *Sid.* 282. *pl.* 13. *Paſch.* 18 *Car.* 2. *B. R. The King* v. *Hardwicke.*

Baſtard.

BASTARD is one that is born of any woman not married; ſo that his father is not known by order of law, and therefore he is reputed *filius populi*, the child of the people. *Termes de la ley.* Sir *Henry Spelman* derives *baſtard* from the *Norman bas*, baſe, and *Saxon ſteort*, riſe or original; as a perſon of a baſe and vile birth. *Spelm. Gloſſ.* We term all perſons, ſays lord *Coke*, by the name of *baſtard*, who are born out of lawful marriage. *Co. Lit.* 244.

All well-regulated governments have laid down and ſettled certain rules of propagation, as neceſſary to the very being of human ſociety. Hence the ſolemnity of marriage was eſtabliſhed, not only as it prevents lewdneſs, but as a regulation, without which there would be no diſtinction of families, and conſequently no encouragement for induſtry, or foundation for acquiring riches; the children therefore that are born in theſe ſocieties, and are to enjoy privileges by the laws, muſt be ſuch as are born according to their rules of copulation; for it is abſurd that the laws ſhould give ſanction and privilege to things done contrary to the law, ſince that would take away the diſtinction of right and wrong, lawful and unlawful; and therefore baſtards by our law lie under ſeveral diſabilities. 1 *Bac. Abr.* 309. He is *quaſi nullius filius*, and can be heir to no man. *Doct. & Stud. Dial.*

Dial. 1. *c.* 7. But though he cannot inherit any anceſtor, yet when he hath gotten a name of reputation, he may purchaſe by it; for all ſurnames were originally acquired by reputation. *Co. Lit.* 3. *b.*

In ancient days baſtardy was ſo diſgraceful, that to retain a baſtard in a man's houſe was a reflection, and the ſtain and reproach of the parents crime dwelt always upon the iſſue; ſo that he could not be admitted to a feudal ſervice; and therefore when the biſhops requeſted that our law ſhould be changed in the particular of baſtard *eignes*, (that is, baſtards born before the marriage of their parents) the barons and earls anſwered with one voice *that they would not change the laws of the realm*; as appears from the following ſtatute:

Stat. *Merton*, 20 *Hen.* 3. *c.* 9. [*A. D.* 1235. *intituled*] "He is a baſtard that is born before the marriage of his parents."

"To the king's writ of baſtardy, whether one being born before matrimony may inherit in like manner as he that is born after matrimony, all the biſhops anſwered, That they would not, nor could not, anſwer to it; becauſe it was directly againſt the common order of the church. (2) And all the biſhops inſtanted the lords, that they would conſent, that all ſuch as were born afore matrimony ſhould be legitimate, as well as they that be born within matrimony, as to the ſucceſſion of inheritance, forſomuch as the church accepteth ſuch for legitimate. And all the earls and barons with one voice anſwered, that they would not change the laws of the realm, which hitherto have been uſed and approved." Fitz. Baſtardy, 21, 22, 25, 27, 28, 30, 33. 1 H. 6. 3. 11 H 4 84. 39 Ed 3. 14, 44 Ed. 3. 12. 12 Co. 72. 2 Inſt. 96.

Who ſhall be deemed baſtards.

All perſons born out of lawful matrimony are baſtards by the common law, but by the civil law, thoſe that are born before marriage are ligitimated by a ſubſequent marriage; for by the civil law, all perſons adopted into a man's family, were inheritable; and the canoniſts have allowed of this notion, becauſe the ſubſequent marriage, they ſay, takes away the preceding guilt, and ſhews a conſent from the beginning. This difference between the civil law may likewiſe be aſcribed to the power which the father, by the *Roman* law, had over his children, becauſe he was the author of their being, and had the care of their education; if therefore a child ſhould not be legitimated by a ſubſequent marriage, the parent, would not have had him under his power; nor would the child have had the benefit of the parent's education; which would have cut a member from the commonwealth. 1 *Bac. Abr.* 310. *cites* 47 *Ed.* 3. 14. *b.* 11 *H.* 4. 81. *Bract. lib.* 5. *fo.* 416. 1 *Rol. Abr.* 624.

All perſons born within marriage are legitimate, unleſs there is an apparent impoſſibility that they ſhould be generated by the huſband; for there is the ſtrongeſt preſumption that can be, that they are legitimate, becauſe the huſband hath the power and dominion over his wife; and therefore may by the law keep her by force within the bounds of duty; to which the canoniſts have added a fanciful reaſon, to wit, the huſband, having the ownerſhip of his wife, hath the property of the fruit of her body, though planted by another; *quicunque ſemen appoſuit marito acquiritur, quia eſt dominus*

nus ventris. Now the preſumption thus being, that it is the huſband's child, it muſt be deſtroyed by contrary proof; and this negative, that it is not the huſband's child, muſt be deſtroyed by contrary proof; and this negative, that it is not the huſband's child, is capable of no other proof than this only, that it muſt be ſhewn impoſſible it ſhould be the huſband's child; if therefore the huſband be proved caſtrated, the iſſue are baſtards. 1 *Bac. Abr.* 310. 1 *Rol. Abr.* 358.

If the huſband be under the age of 14, the iſſue are baſtards; for before the age of puberty, generation is naturally impoſſible. *Co. Lit.* 244. 1 *Rol. Abr.* 359.

Where acceſs is preſumed, yet evidence may be given of the impoſſibility of begetting children. 2 Stra. 940. Mich. 6 Geo. 2. *Ex dimiſſ. Lomax* v. *Holmden et al'.*

In ejectment the queſtion on a trial at bar was, whether the leſſor was ſon and heir of *Caleb Lomax*, Eſq; deceaſed, which depended on the queſtion of his mother's marriage. And that being fully proved, and evidence given of the huſband's being frequently at *London*, where the mother lived, ſo that acceſs muſt be preſumed; the defendant was admitted to give evidence of his inability from a bad habit of body. But their evidence not going to an impoſſibilty, but an improbability only; that was not thought ſufficient, and there was a verdict for the plaintiff.

If the huſband be not within the four ſeas, during the time that paſſes between the conception and birth of the child, it is a baſtard. This was ſettled when the king's dominions extended to the four ſeas only; for to paſs and repaſs in the king's dominions was poſſible, without any knowledge or proof; but to paſs out of another's dominions into the king's, without ſome knowledge or proof of the matter, was ſuppoſed by the law not poſſible; for there is no ſuch paſſage in a realm well governed without examination. 1 *Rol. Abr.* 358. *Co. Lit.* 244. *Bract.* 239. If the huſband be in *Ireland*, during the time the wife goes with child, the iſſue is no baſtard, becauſe the huſband was within the king's dominions. 1 *Rol. Abr.* 358.

Order to charge a man to be the father of a baſtard begotten on a married woman quaſhed, becauſe it doth not ſay that her huſband was beyond ſea forty weeks. Carth. 469. Mich. 10 Wil. 3. B. R. The King v. Albert Alverſton. Lord Raym. 395, 396. S. C.

By an order of two juſtices, *&c.* of *Middleſex*, the defendant being adjudged the reputed father of a baſtard child, was thereby charged to maintain him; which order was ſpecial, to wit, it recited that *Mary Spence*, the wife of *Jonathan Spence* mariner, was delivered of a male baſtard child, and that it appeared to them upon oath of, *&c.* that *Jonathan Spence* her huſband was in the king's ſervice at *Cadiz* in *Spain*, and not within the king of *England*'s dominions, at the time when the ſaid child *was begotton or born*; which order was confirmed upon an appeal. And now it was moved to quaſh both the ſaid orders; firſt becauſe the *Stat.* 18 *Eliz.* concerning baſtard children doth not extend to this caſe, for the juſtices have no juriſdiction, but where the child was *born* out of lawful matrimony. If this woman had been delivered *alone* of a child *without crying out for help*, it is certain this would not have been felony within the *Stat.* 21 *Jac.* 1. *c.* 27. though no proof could be made that the child was born dead. 2dly, It is impoſſible there ſhould be a reputed father when there is a known father of whom the law takes notice; and though this child may be a baſtard in regard to any right of inheritance, yet that is not ſufficient to bring it within the conuſance of the juſtices of the peace by virtue of this ſtatute. 3dly,

The third exception was to the form of the order, *viz.* for that it is not alledged therein, that the huſband was beyond ſea, for the ſpace of *forty* weeks before the birth of the child, and it is not ſufficient to ſay, that he was beyond ſea at the time of the *conception*, becauſe *that* is what in nature cannot *certainly* be known. And for this laſt reaſon only, theſe orders were quaſhed; but the court bound the defendant by recognizance to appear at the next quarter-ſeſſions for *Middleſex*, being inclinable to bring the caſe within the intent of the *Statute* 18 *Eliz.* becauſe of the frequent miſchiefs of this kind which have happened among ſeamens wives.

But in trials of baſtardy at this day, if the jury find that the huſband had not acceſs, though the huſband and wife lived in *England*, the child is a baſtard, but this proof muſt be clear, otherwiſe acceſs will be preſumed in favour of legitimation. 1 *Bac. Abr.* 311.

Though the huſband is in England, yet if no acceſs can be proved the iſſue are baſtards. 2 Stran. 925. Hil. 5 Geo. 2. Pendrell v. Pendrell.

Upon an iſſue out of *Chancery* to try, whether the plaintiff was the heir at law of one *Thomas Pendrell*, it was agreed, that the plaintiff's father and mother were married, and cohabited for ſome months: That they parted, ſhe ſtaying in *London*, and he going into *Staffordſhire*; that at the end of three years the plaintiff was born. And there being ſome doubt upon the evidence, whether the huſband had not been in *London* within the laſt year, it was ſent to be tried. And the plaintiff reſted at firſt upon the preſumption of law in favour of legitimacy, which was encountered by ſtrong evidence of no acceſs. And it was agreed by court and counſel on the trial at *Guildhall* before lord chief juſtice *Raymond*, that the old doctrine of being within the four ſeas was not to take place; but the jury were at liberty to conſider of the point of acceſs, which they did, and found againſt the plaintiff. The chief juſtice allowed the defendant to prove the mother to be a woman of ill fame. *Salk.* 120. *Cro. Jac.* 541. But he would not allow the mother's declarations to be given in evidence, till ſhe had been called, and denied them upon the croſs examination.

If no acceſs of the huſband be adjudged, the iſſue are baſtards. 2 Stran. 1076. Trin. 10 G. 2. Rex v. The Inhabitants of Bedall in Yorkſhire.

An order was made upon one *Moor*, as the putative father of two baſtards born of the body of *Elizabeth* the wife of *Richard Sharpleſs*: in which it is ſtated, that for ſeven years before, the huſband had no acceſs to her, ſhe having never ſeen or heard of him all that time, and not knowing whether he was alive or dead; which the juſtices adjudge to be true, and that *Moor* is the father of them, and order him to provide accordingly. Upon appeal to the ſeſſions, the caſe is ſtated with ſome variation: that in 1728, ſhe was married to *Sharpleſs*, then a ſoldier in *Mullins*'s troop, in a barn, by a perſon not in the habit of a clergyman: that there had been no acceſs for ſeven years: but it appearing by a certificate from the commiſſary general's office, 7th *April* 1737, and from the evidence of *Simon Clarkſon*, that one *Richard Sharpleſs*, who he was told was formerly in *Mullins*'s troop, was muſtered as a private gentleman in the third troop of horſe guards from 25th *June* 1733, to 23d *February* 1736, though *Clarkſon* ſaid he could not take upon him to ſwear that it was the ſame *Richard Sharpleſs* pretended to be married as aforeſaid: upon this ſuppoſition of the huſband's being alive, the ſeſſions were of opinion, the children were not baſtards, and reverſed the order of the two juſtices. And

now

now upon debate (the chief juſtice abſent) the order of ſeſſions was quaſhed, and the order of the two juſtices confirmed: for it being ſtated in both orders, that there was no acceſs, according to the caſe of *Pendrel* v. *Pendrel*, *Hil.* 5 *Geo.* 2 it was immaterial whether the huſband was alive or not; but if it was material, here is no evidence to prove it, the identity not being ſworn to; or if it was, yet the evidence of his being alive was improper to have been received, and even the marriage itſelf doubtful

The wife may be admitted as an evidence to baſtardize her own child, begotten during her marriage; but ſhe ſhall not give evidence of any *other* fact relating to it, which *can* be proved by any other perſon. 2 Seſſ Ca. 175. Mich 8 Geo. 2. The King againſt Reading.

General order of baſtardy; appeal to the next general quarter ſeſſions by the defendant, who make an order and ſet out, That it appears by the order of baſtardy the defendant was adjudged to be the putative father of a child begotten on *M. Almont* wife of *J. Almont* of *Sherburn* in the ſaid county. The ſaid *M. Almont* gave evidence that the ſaid *Thomas Reading* had carnal knowledge of her body in or about *Auguſt* 1732, at *Sherburn* aforeſaid, and ſeveral times ſince; and that her huſband had no acceſs to her from the month of *May* 1731, to the time of her examination in that court, being the third of *October* 1733; and that the ſaid *Thomas Reading* was the father of the ſaid child; of which things ſhe the ſaid *Mary* was the only evidence. And it alſo appearing to the court, by evidence given before the ſaid court, that the ſaid *J. Almont* the huſband was frequently in the county of *Berks*, ſix or ſeven miles diſtant from *Sherburn*, where the ſaid *Mary* at that time inhabited, and that *J. A.* is now living, and that the ſaid *Mary* was married to him before ſhe was begot with child; and this being a cauſe tried at this *Michaelmas* ſeſſions, it became a queſtion whether the ſaid *Mary* was a competent witneſs to prove her huſband had no acceſs to her, which is ſubmitted to the determination of the judges who laſt came the *Oxford* circuit. At the next general quarter-ſeſſions another order is made, reciting the appeal to the laſt ſeſſions, and the order of baſtardy, and that the judges had declined giving their opinions upon the ſaid facts. And the appeal came on at this ſeſſions to be *reheard*. It appeared to the court by other evidence, that the ſaid *J. A.* was from the month of *June* to *Michaelmas* following, or thereabouts, at or near *Southampton*, and that the ſaid *M. A.* was all that time at *Sherburn* aforeſaid, whereby it was adjudged that they could not in that time be together ſo as for the ſaid *J. A.* to be the father of the child; whereupon it appeared to this court, upon the oath of the ſaid other witneſſes, and of the ſaid *Mary Almont*, that the ſaid *T. Reading* was the father of the ſaid child; therefore it is ordered by the court, that the ſaid order made by the ſaid two juſtices of the peace be and is confirmed. Theſe orders being removed into this court, ſeveral exceptions were taken thereto; but the material exception, and that upon which the principal queſtion aroſe was, whether the wife could be admitted as an evidence to baſtardize her own children? And it was ſaid to be againſt the rule of the law, that ſhe ſhould be evidence for or againſt her huſband; and the reaſon of the law was, that in caſe ſhe was to be evidence againſt her huſband, as ſhe muſt be if ſhe could be an evidence for him, it would be the occaſion of great ſtrife and contention, and entirely deſtroy that harmony which ought to ſubſiſt between man and wife. That in law they were conſidered as one fleſh, though with two ſouls, acccording to my lord *Coke*. That of all things ſhe ought not to be admitted as a witneſs

in

in this caſe to baſtardize her own child, who perhaps might be intitled unto conſiderable poſſeſſions by deſcent, which might by this means be taken from him. On ſhewing cauſe it was inſiſted, that the original order of baſtardy was right, and that as to the ſeſſions orders which were admitted to be bad, agreed they ſhould be quaſhed; but then, as they were nought in themſelves, inſiſted that the court ought not to take any notice of any thing in them, as in the caſe of a bad plea, which if bad, the matter in it was not regarded by the court. Upon the whole it was ſaid, ſome fault ought to be ſhewn in the original order, without having any recourſe to the matter, which was diſcloſed by the ſeſſions orders. But the whole court were clear of opinion, that they muſt regard the ſpecial matter ſtated to them by the ſeſſions, whether the orders were good or not, and held that the wife could be a witneſs to no other fact in this caſe but that of incontinence, which ſhe was admitted to be from the neceſſity of the thing, but not to the abſence of her huſband, which might properly be proved by other witneſſes, and likened it to the caſe of hue and cry, where the perſon robbed ſhall be admitted a witneſs of the fact of robbery, but not to prove any other matter relating thereto, *viz.* in what hundred the place was, *&c.* becauſe that may be proved by others. The objection taken to the ſeſſions order aroſe from this, that the firſt ſeſſions to which the appeal was made, after having ſtated the evidence, and that a queſtion aroſe whether the wife could be a witneſs in this caſe, and that they agreed to refer that queſtion to the judge who laſt went the *Oxford* circuit, without determining any thing, or adjourning the further conſideration of the appeal to any further time. Afterwards at the next quarter-ſeſſions, taking notice that the judges had declined giving any opinion, and that they had then reheard the ſaid appeal, they confirm the order of two juſtices. So that the firſt ſeſſions determined nothing, nor did they adjourn the appeal to the next, and the next had no authority to take the matter as a new cauſe; and ſo it was ſaid in a late caſe of the juſtices of *Salop.* An appeal had been made from the poor's rate to the ſeſſions, and it appeared the ſeſſions had adjourned the further conſideration of the matter to the next day. But it did not appear that the ſeſſions was at the ſame time adjourned, and they were forced to get an affidavit that the ſeſſions continued the next day, and they got a new *Certiorari* to return that fact. Upon the whole it was inſiſted, to make the laſt ſeſſions order good, that an adjournment ſhould have been made of this appeal. In *Hilary* term following, order of ſeſſions was quaſhed, becauſe not properly adjourned, as was likewiſe the order of two juſtices, by conſent of counſel, and defendant entered into recognizance to appear at ſeſſions, and abide ſuch new order, as ſhould be made on him.

In this caſe, which was an order of baſtardy made at the ſeſſions, and *ſpecially* ſtated, and which confirmed an order of two juſtices, which was made *general*, the court held, that where an order of two juſtices is made *general*, and the ſeſſions confirm that order, and ſtate the matter ſpecially, in caſe they quaſh the ſeſſions order, they muſt likewiſe quaſh the order of the two juſtices, who made an order upon the *ſame* fact, which is ſtated in the ſeſſions. Report of the preceding caſe from a manuſcript. Mich. 8 Geo. 2. King againſt Reading.

the ſeſſions order: And that if the ſeſſions quaſh an order of two juſtices upon a fact, which is ſpecially ſet forth; and afterwards this court ſhould be of opinion that, as the fact was ſet forth by the ſeſſions, they had no grounds for quaſhing the original order, they held that in ſuch caſe, they would quaſh the ſeſſions order, and revive the original order. They likewiſe held that a wife can be ſo far a witneſs to baſtardize the iſſue begotten on her, during the marriage; as to give evidence of the criminal converſation between a ſtrange man and her, becauſe of the neceſſity of the thing; for that it is generally ſo ſecretly carried on, that no one but herſelf and the man are preſent: But that ſhe ſhall not be allowed to give evidence of any other fact whatſoever relating to it; as that her huſband had been abſent for ſo long time, and at ſuch a diſtance, and the like: For that theſe things may be proved by *other* perſons, as well as by her; and therefore ſhe ſhall not be allowed to give evidence of them: And they compared it to the caſe of the ſtat. of Hue and Cry, where, for the neceſſity of the thing, the party is allowed to give evidence of the robbery himſelf; but he cannot be a witneſs as to any other part of the circumſtances, upon which the action is founded; and they compared it likewiſe to the ſtat. 3 *H.* 7. where, on a forcible marriage, the wife ſhall be allowed an evidence. In this caſe there was likewiſe a reference of the ſpecial matter to the judge of aſſize, who refuſed to do any thing in it, which reference was made the firſt ſeſſions, in which the appeal was lodged; and the judge doing nothing in it, the juſtices of the ſecond quarter-ſeſſions take it up, and make an order on it; and the queſtion was, whether the juſtices of peace ought, in this caſe, to have made an *expreſs* adjournment over of this matter, to the next quarter-ſeſſions; or whether the referring it to the judge of aſſize, was not a ſufficient continuance of it to the next ſeſſions. The *Chief Juſtice* (lord *Hardwicke*) ſeemed inclined to think, that this referring the matter to the judge of aſſize, was ſufficient; for that he did not know that it was ever determined that the ſeſſions were obliged to make as regular continuances of their proceedings founded on the ſtatutes, as this court is obliged to do: But he allowed they ought not to do it in the caſe of indictments, becauſe that was a proceeding on the common law.—*Page* and *Probyn* thought the ſame, but *Lee* was very doubtful on it, by reaſon of the words of the ſtat. 18 *Eliz.* which are (the *next* ſeſſions); and therefore the court ordered this point to be argued again.

This caſe coming on again in *Hilary* term 8 *Geo.* 2. Mr. *Abney* took exceptions to the order and the *Certiorari*, there being this variance in them, *viz.* The order of two juſtices ſays, that the baſtard was begotten on the body of *Mary Almond*; and both the orders of ſeſſions call the woman *Almont*; and the *Certiorari* calls her *Almond*; and he ſaid that this was a fatal exception; and cited *Salk.* 472. And in *Trin.* 2 *Geo.* 2. there was a variance between the orders in the name of the pariſh, *viz.* *Redbown* and *Redbourn*, and that was held to be fatal. Mr. Serjeant *Wright* ſaid that *Almond* and *Almont* founded alike, to wit, *Almon*; and that it appeared in *Somner's Saxon Dictionary* that *D.* and *T.* were uſed for one another; and cited 1 *Mod.* 107. 1 *Keb.* 105. *Style's Rep.* 390. Mr. *Strange* cited *Trin.*

Trin. 2 *G.* 2. *Haywood* and *Ulliſcal*, where the order was made for the removal of a poor perſon to the pariſh of *Ulliſcal*, with a double *L*, and the appeal was made by the pariſh *Uliſcal* with a ſingle *L*, and ſo was the order of ſeſſions made: and on argument it was held here that this was not ſuch a variance as was to be regarded; and he cited *William* and *Ogle*, *Hil.* 4 *Geo.* 2. on *nul tiel Record* pleaded, *Segrave* and *Seagrave*, was held no material variance. But *Trin.* 4 *G.* 2. *Weſley* and *Weſtley* were held to be different, becauſe when you come to ſpell the word, *viz. Weſtley* and *Weſley*, they don't ſound alike. The court was doubtful upon this exception, and the Ch. Juſt. ſaid, he thought the caſe of *Ulliſcal* and *Uliſcal* to be a pretty ſtrong one in ſupport of this; but he recommended to the counſel of both ſides, that all theſe orders ſhould be quaſhed by conſent, and that the defendant ſhould be bound in a recognizance here, to appear at the next quarter-ſeſſions in the county: but ſerjeant *Wright* ſaid he thought that in this caſe the defendant ought not to be bound over to appear at the ſeſſions; for that the only reaſon why that was done was, becauſe the defendant ſhall not be entirely diſcharged from the maintenance of his baſtard, by reaſon of any orders (which were made on him) being here quaſhed for want of form: but that this reaſon does not hold in this caſe, for that the ſeſſions had ſtated this man's caſe ſpecially on the orders, and that after argument, this court had been of opinion that the defendant was wrongly charged, and cited 1 *Ventr.* 59. 2 *Keb.* 604. *Rex* and *Tinham*. *Trin.* 12 *G.* 1.—The court gave no poſitive anſwer to this point, but ſaid only, that in caſe the counſel of both ſides would conſent to the quaſhing all the orders, they thought, they might very well bind over the defendant to appear at the ſeſſions; and then the Ch. Juſt. ſaid, that the order of the two juſtices was certainly good, and well removed; and that he thought, both the firſt and ſecond order of ſeſſions were bad; for tho' the ſeſſions may adjourn over ſuch order to the *next* ſeſſions, and are not obliged to determine the matter at the *firſt* ſeſſions, yet they muſt do *ſome* act at the *firſt* importing an adjournment of the matter over to the *next* ſeſſions, tho' there is no occaſion for a formal regular adjournment. But this they have not done here; for at the *firſt* ſeſſions, they have referred the matter generally to the next judge of aſſize, without doing any thing importing an adjournment of the matter over to the next ſeſſions; ſo that the juſtices power was at an end, and the appeal was diſcontinued.—— *Page* and *Probyn* ſaid little or nothing to this point, but *Lee* ſaid he was of the ſame opinion with the Ch. Juſt. as to this matter of the adjournment. However, *all* the orders were quaſhed by conſent, and the defendant was bound in a recognizance to appear at the next ſeſſions.

Wife's evidence admitted in an order of baſtardy. 1 Bu. Juſt. 173. Mich. 26 Geo. 2. King and Rooke.

An order of the two juſtices ſtates; It appears to us by examination of *Dorothy* the wife of the reverend Mr. *Henry Bird*, that ſhe lived ſeparate from her huſband from *Michaelmas* 1750, to *February* 1752; and that ſhe has not in all that time ſeen or been with him, he being a priſoner in *York Caſtle*: That *John Rooke* had carnal knowledge of her body, on the 30th of *January* 1750, and got her with child of the baſtard. Exception was taken, that the wife in this caſe was an incompetent witneſs. By *Lee* Ch.

J. and the court: How far the evidence of the wife is to be admitted upon orders of baſtardy, is now ſettled in the caſe of *K.* and *Reading*; where the wife appeared upon the order to be the only witneſs to charge the putative father: upon this, the order was quaſhed: and the reaſon given by the court was, that the wife might be admitted to prove the act of adultery *ex neceſſitate*, for of that there could be no other evidence; but not to prove other facts, of which there may be witneſſes. This caſe being ſimilar, muſt be determined upon the authority of that caſe. The wife's examination alone does not make the order bad, but the facts to which ſhe is examined. The neceſſity of the thing excepts her, as to the fact of adultery, out of the general rule; but not as to the fact of no acceſs, for that may be proved by particular circumſtances examinable by the juſtices below. But upon this order ſhe appears to be the only evidence, and her declarations are not admiſſible to baſtardize her iſſue. And the order was quaſhed.

But the evidence of the wife *alone* is not ſufficient to prove no acceſs in the huſband, in order to make a ſettlement for the iſſue as baſtards. Andr. Rep. 8. Trin. 10 & 11 Geo. 2. The King againſt The Inhabitants of Bedell.

An order of baſtardy was made by two juſtices, reciting, That whereas *Elizabeth Sharpleſs*, the wife of *Richard Sharpleſs*, *anno* 1733, was delivered of a child in *Bedell*, and that on the examination of the ſaid *Elizabeth*, and on other proof, it appeared, that her ſaid huſband for ſeven years and nine months before that time had not cohabited with her, or had any acceſs to her; and that the ſaid *Elizabeth* did not know whether he was alive or dead; and therefore it is adjudged that the ſaid child is a baſtard, and that *Chriſtopher Moor* is the father. And upon appeal an order of ſeſſions was made; which, after reciting the original order, ſet out, that it appeared farther on the evidence of the ſaid *Elizabeth*, that in 1728, ſhe was married to *Richard Sharpleſs* in a barn by perſons unknown; and alſo that it appeared by the certificate of the commiſſary general, and the evidence of *E. C.* that one *Richard Sharpleſs* was muſtered in the guards *anno* 1733. and continued there from that time until———but the ſaid *E. C.* could not tell whether the ſaid *Richard Sharpleſs* was the huſband of the ſaid *Elizabeth*. And it not appearing that her huſband was dead, therefore the ſeſſions quaſhed the firſt order. Motion by Mr. ſolicitor general *Strange* to quaſh the order of ſeſſions, and confirm the original order. And it was argued by him and Mr. *Deniſon*, that if the huſband in this caſe be actually living, it is not material; for as he had no acceſs to his wife for ſeven years and nine months, the children born in that time are to be conſidered as baſtards: And they cited the following caſes. *Pendrell* and *Pendrell*, *Hill.* 5 *G.* 2. This was an iſſue of legitimacy directed out of *Chancery*, and tried before lord chief juſtice *Raymond*; and it being proved that the huſband had no acceſs to the wife, though he was always in *England*, it was held, that the child was a baſtard: and the court of *Chancery* acquieſced in the determination. *Lomax* and *Holden*, *Mic.* 6 *Geo.* 2. Upon an iſſue of legitimacy, it was agreed by the court, that if a huſband is impotent, though he continues in the houſe with his wife, the iſſue may be baſtardized. *The inhabitants of St. Andrew* and *St. Bride*; *Hill.* 3 *Geo.* 1. agreed, upon debate, that if a huſband hath no acceſs to his wife, her iſſue are baſtards. It was admitted by Mr. *Naſh* and Mr. *Barnardiſton* on the other

other ſide, that the law is now ſettled as has been mentioned; that the iſſue of a married woman may be baſtardized, though the huſband be within the four ſeas; contrary to the old rule. *Co. Lit.* 244. *a.* but then (they urged) the evidence ought to be very plain; as particularly that the wife only can be a witneſs of the act of incontinency. But in the preſent caſe her evidence only, that the huſband had no acceſs, (which is the ſole proof the firſt order is founded on) is inſufficient: and for this defect in that order the ſeſſions might quaſh it. That this evidence is not ſufficient, was held in a caſe in lord *Holt*'s time, and in the caſe of *The King* and *Reading*. The court (*ſc. Page*, *Probyn*, and *Chapple*, juſtices) were clearly of opinion, (1) That though the evidence of the wife alone in this caſe is not quite ſufficient, yet the original order is good; it appearing to be made not only on her teſtimony, *but on other proof:* and this, it muſt be intended, was *legal* evidence. (2) That the ſeſſions order is ill; becauſe the only thing they have proceeded upon, is the life of the huſband: and this is not material, as there was no acceſs by the huſband to the wife; which this order admits. And *Page* juſtice cited *The Inhabitants of St. Margaret Weſtminſter* and of *St. Saviour Southwark*; where after ſolemn debate it was held, that a married woman may have a baſtard, if her huſband hath no acceſs to her, though he be in *England*. Beſides, the evidence of the marriage and of the life of the man, as ſet out in the ſeſſions order, is imperfect and inſufficient. Upon this, it was prayed by Mr. *Marſh*, that he might be at liberty to except to the original order. But this was refuſed, becauſe the perſon charged was not in court. And though it was earneſtly deſired, that the rule to ſhew cauſe be enlarged, in order to bring up the party, and except to the firſt order; to which *Probyn* juſtice inclined; but *Page* juſtice ſtrongly oppoſing it, the juſtices order was now confirmed, and the other quaſhed.

Child begotten after divorce *à menſa et thoro*, ſhall be taken to be a baſtard; otherwiſe after voluntary ſeparation, unleſs found that the huſband had no acceſs.

Upon a ſpecial order of ſeſſions, wherein the fact was ſtated for the opinion of the court, the caſe was, that *H.* was divorced *à menſa et thoro*, and afterwards his wife lived with one *Ellis* in adultery, in the pariſh of *St. Giles*, and had ſeveral children called *Ellis*, and regiſtered as his. *Et per cur.* When a woman is ſeparated from her huſband by ſuch a divorce, the children ſhe has during the ſeparation, are baſtards; for we will intend a due obedience to the ſentence, unleſs the contrary be ſhewed; but if baron and feme, without ſentence, part and live ſeparate, the children ſhall be taken to be legitimate, and ſo deemed till the contrary be proved; for acceſs ſhall be intended: but if a ſpecial verdict find the man had no acceſs, it is a baſtard; and ſo was the opinion of my lord *Hale* in the caſe of *Dickins* and *Collins*.

1 Salk. 123. Mich. 5 Ann. B. R. between the pariſhes of St. George and St. Margaret Weſtminſter.

A widow being delivered 40 weeks and nine days after her huſband's death, the child adjudged

Ejectione firmæ for lands in *Munden* in the county of *Hertford*: The queſtion was, upon evidence of the jury, whether *Edmund Andrews* dying the 23d of *March*, *anno* 1610. and *A.* his *feme* being *privatement enſient*, but not delivered until 5th *Jan.* 1611. (which was forty weeks and nine days, and then delivered of a daughter named *Elizabeth*) ſhall be reputed

Legitimate. Cro. Jac 541. Mich. 17 Jac. 1. B. R. Aſop v. Bowtrell.

the father to the ſaid *Elizabeth*, or that ſhe were a baſtard; for it was proved that he fell ſick upon the 22d day of *March*, and died the day following of the plague: and that *Edmund Andrews* (father of the ſaid *Edmund* who was dead) in malice to his ſon's wife, did much abuſe her, and cauſed her to be diſlodged from places where ſhe was harboured, and to lie in the cold ſtreets; and that ſhe was ſo uſed for ſix weeks together before her travail; and ſhe being brought into a woman's houſe, who commiſerated her caſe, having warmth and ſuſtenance, was delivered preſently within twenty-four hours of the ſaid *Elizabeth:* and this being proved, and this miſuage by five women of good credit, and two doctors of phyſick, *viz.* Sir *William Baddy*, and doctor *Mundford*, and one *Chamberlaine* (who was a phyſician, and in nature of a midwife) upon their oath, they affirming that the child came in time convenient to be the daughter of the party who died: and that the uſual time for a woman to go with child was nine months and ten days, *viz. menſes ſolares*, that is, thirty days to the month, and not *menſes lunares*, and that by reaſon of want of ſtrength in the woman or the child, or by reaſon of ill uſage, ſhe might be a longer time, *viz.* to the end of ten months, or more; and ſo both ancient and modern authors and experience prove: the court held here, that it might well be as the phyſicians had affirmed, that ten months may be ſaid properly to be the time *mulieribus pariendo conſtitutum.* Againſt this, a recognizance was produced, *Trin.* 18 *Ed.* 1. *rol.* 13. in this court, that becauſe a *feme* went eleven months after the death of her huſband, it was reſolved that the iſſue was not legitimate, being born *poſt ultimum tempus mulieribus pariendo conſtitutum.* But note, it is not there ſhewn what was *ultimum tempus mulieribus pariendo conſtitutum.* And the phyſicians further affirmed, that a perfect birth may be at ſeven months, according to the ſtrength of the mother, or of the child himſelf, which is as long before the time of the proper birth; and by the ſame reaſon it may be as long deferred by accident, which is commonly occaſioned by infirmities of the body, or paſſions of the mind: and ſo the court delivered to the jury, that the ſaid *Elizabeth*, who was born forty weeks and more after the death of the ſaid *Edmund Andrews*, might well be the daughter of the ſaid *Edmund:* and in this caſe the marriage betwixt them being at *Utrick* beyond ſeas, and certified under the ſeal of the miniſter there, and of the ſaid town, and that they cohabited for two years together as man and wife, was a ſufficient proof that they were married. *Vid.* 1 *Hen.* 6. 3. 21 *Ed.* 3. 9. 41 *Ed.* 3. 11. What ſhall be ſaid to be the time *mulieribus pariendo conſtitutum*, ſee Sir *Thomas Rydley's View of the Civil Law*, *fol.* 55. where he relates of a widow in *Paris* that was delivered of a child the fourteenth month after her huſband's death, and yet the judges awarded the child to be legitimate. The like judgment was given in the conſiſtory at *Wittenburgh*, in the caſe of a woman who was brought-to-bed in the eleventh month after her huſband's death. *Vide Cornadi Manſeri partem ſecundam de Matrimoniis*, *cap.* 36. *fol.* 150. *Selden de ſucceſſionibus*, *fol.* 22. *Croke's Anatomy*, *lib.* 6. *fol.* 336.

Two juſtices removed *Edward Young* the younger, and *Rebecca* his wife, and *Mary* their child, from *Chilham* to *Preſton* near *Faverſham* (both in *Kent:*) and the ſeſſions confirmed (in *all points*) the order of the two juſtices. The caſe, as ſtated to appear to the ſeſſions, was, That the ſaid *Edward Young* the younger, being legally ſettled in *Preſton*, and not being then a widower was on the 25th of *January* 1758, WITHOUT *the conſent of his father*, who was then living, *married by licence* in the pariſh church of *Tenham*, to *Rebecca Drury*, who was ſettled in the ſaid pariſh of *Tenham*, and who is removed to *Preſton* by the ſaid order, AS the WIFE of the ſaid pauper, the ſaid *Edward Young* being then an INFANT of twenty years: and that afterwards, the ſaid *Rebecca* was brought-to-bed, in the pariſh of *Chilham*, of the ſaid MARY, removed by the order. Whereupon they adjudged and ordered that the ſaid order ſo made by the two juſtices be, in *all points*, confirmed.

The marriage of a pauper being contrary to 26 G. 2. c. 33. ſect. 11. (the man being under age and not, &c.) was holden to be abſolutely void; and therefore the woman and child could not be removed to *his* ſettlement. 2 Bur. Rep. 897. Mich. 33 Geo. 2. Rex v. Inhabitants of Preſton near Faverſham.

Mr. *Lee*, who had moved to quaſh theſe orders, objected to that *part* of them which relates to the *woman* and *child:* for that the *marriage* was ABSOLUTELY *null* and *void*, by the expreſs words of the marriage act 26 *G.* 2. *c.* 33. *ſ.* 11. As the pauper not being a widower, and being *under age*, was married by licence WITHOUT *the conſent of his father* (who was then living). Mr. *Knowler* was to have ſhewn cauſe now, againſt quaſhing theſe orders. But he owned that the words of the act were ſo ſtrong that he could not get over them; (being "That it ſhall be *abſolutely* null and void to all intents and purpoſes *whatſoever:*") UNLESS, (he ſaid,) the court ſhall think a *declaratory ſentence* to be neceſſary.

But Mr. *Robinſon*, who was on the ſame ſide, entered into the defence of theſe orders, and cited 2 *Strange* 1066. *between the pariſhes of St. Peter* and *St. Nicholas in Ipſwich*; to ſhew that the word, "void" may be conſtrued "*voidable.*" He alſo cited the caſe of *Barber* v. *Dennis*, in 1 *Mod.* 69. and in 1 *Salk.* 68. where it was holden to be immaterial whether the apprentice *de facto* was *legally* ſo, or not. (And he obſerved that in 2 *Strange* 1067. the caſe of *Cuerden* v. *Leyland* is taken notice of, and diſtinguiſhed from the caſe *then* before the court.) So, on 23 *H.* 6. *c.* 10. and 21 *H.* 8. mentioned in *Hob.* 166. in the caſe of *Winchcombe* v. Biſhop of *Wincheſter and Pulleſton.* So, on *Weſtm.* 2. So, on 8 *H.* 6. *c* 10. concerning ſheriff's bonds, (inſtanced in the ſame caſe in *Hobart.*) So on 1 *Eliz. c.* 19. concerning college leaſes, (there alſo mentioned.) He urged, that it is highly *unreaſonable*, that a virtuous young woman and her innocent children ſhould be turned a-drift, and be conſidered as whore and baſtards, without having any *opportunity to conteſt* ſo ſevere a judgment againſt them. Therefore this marriage ought to be avoided *by a ſentence* in the eccleſiaſtical court; and not in a *collateral* method, by an *ex parte* order of juſtices, made WITHOUT *hearing them or any perſon on their behalf.*"

Mr. *Norton*, *contra*, was beginning to ſpeak. But lord *Mansfield* (conceiving the point to be clear, and commending Mr. *Knowler* for his candour in giving it up) ſtopt him, and took the diſtinction between the acts of parliament made againſt *one* of the parties, and for the benefit of *another* of the parties,

parties, (and where ſuch other party has an *election* either to take benefit of it, or not,) and acts of parliament made *againſt* BOTH. *This* is an act made *againſt* BOTH: and the marriage is thereby expreſly declared "abſolutely null and void to ALL intents and purpoſes *whatſoever*." So that it is not like the caſes cited, nor like the caſes on the ſtatute of bigamy 1 *Jac.* 1. *c.* 11. Which was made only againſt *one* of the parties. The other judges concurred with his lordſhip: and *they* alſo obſerved that this act was made againſt *both*, and Mr. juſtice *Foſter* added— "Againſt the *innocent* CHILDREN of both." And he ſaid it would be againſt the ſpirit of the act to underſtand it *otherwiſe* than that the marriage ſhall be ABSOLUTELY *void*. Wherefore, *Per Cur.* The ORDER muſt be confirmed as to the man; but quaſhed as to the *woman* and *child*. *Rule* accordingly.

18 Eliz. c. 3. **Stat.** 18 *Eliz. c.* 3. [*A. D.* 1576. *intituled*] "Juſtices of peace ſhall order the puniſhment of the mother, and reputed father of a baſtard, *&c.*"

2 Roll 82. Stiles 207, 283. "A rogue ſhall be conveyed from conſtable to conſtable, until he come to the gaol. A ſtock to ſet the poor on work, ſhall be provided in every city and town corporate. Houſes of correction ſhall be aſſigned in every county. Lands holden in ſocage may, during twenty years, be given towards the maintenance of houſes of correction, and ſtocks for the poor. EXP."

Cro.Car. 341, 350, 470. *Sect.* 2. "Concerning baſtards begotten and born out of lawful matrimony (an offence againſt God's law or man's law) the ſaid baſtards being now left to be kept at the charges of the pariſh where they be born, to the great burden of the ſame pariſh, and in defrauding of the relief of the impotent and aged true poor of the ſame pariſh, and to the evil example and encouragement of lewd life: (2) It is ordained and enacted by the authority aforeſaid, That two juſtices of the peace, (whereof one to be of the *Quorum*, in or next unto the limits where the pariſh church is, within which pariſh ſuch baſtard ſhall be born, upon examination of the cauſe and circumſtance) ſhall and may by their diſcretion take order, as well for the puniſhment of the mother and reputed father of ſuch baſtard child, as alſo for the better relief of every ſuch pariſh in part or in all; (3) and ſhall and may likewiſe by like diſcretion take order for the keeping of every ſuch baſtard child, by charging ſuch mother or reputed father, with the payment of money weekly or other ſuſtentation for the relief of ſuch child, in ſuch wiſe as they ſhall think meet and convenient: (4) And if after the ſame order by them ſubſcribed under their hands, any the ſaid perſons, *viz.* mother or reputed father, upon notice thereof, ſhall not for their part obſerve and perform the ſaid order, that then every ſuch party ſo making default in not performing of the ſaid order, to be committed to ward to the common gaol, (5) there to remain without bail or mainpriſe, except he, ſhe or they ſhall put in ſufficient ſurety to perform the ſaid order, or elſe perſonally to appear at the next general ſeſſions of the peace to be holden in that county where ſuch

Mod. Caſes in law 4.

2 Bulſt. 341, 348, 350, 355. A proviſion for the keeping of baſtards.

Farther proviſions relating hereto, 7 Jac. 1. c. 4.

ſuch order ſhall be taken; *(6)* and alſo to abide ſuch order as the ſaid juſtices of the peace, or the more part of them, then and there ſhall take in that behalf (if they then and there ſhall take any;) *(7)* and that if at the ſaid ſeſſions the ſaid juſtices ſhall take no other order, then to abide and perform the order before made, as is aboveſaid. By 3 *Car.* 1. *c.* 4. continued until the end of the firſt ſeſſion of the next parliament, and farther continued by 16 *Car.* 1. *c.* 4."

Stat. 7 *Jac.* 1. *c.* 4. [*A. D.* 1609.] *made, among other purpoſes*, "for the due execution of the laws againſt *lewd* and idle perſons."

Sect. 7. "And becauſe great charge ariſeth upon many places within this realm by reaſon of baſtardy, beſides the great diſhonour of Almighty God; Be it therefore enacted by the authority aforeſaid, That every lewd woman, which after this preſent ſeſſion of parliament ſhall have any baſtard which may be chargeable to the pariſh, the juſtices of peace ſhall commit ſuch lewd woman to the houſe of correction, there to be puniſhed, and ſet on work, during the term of one whole year; *(2)* and if ſhe ſhall eftſoons offend again, that then to be committed to the ſaid houſe of correction, as aforeſaid, and *there* to remain until ſhe can put in good ſureties for her good behaviour, not to offend ſo again." The puniſhment of lewd women who have baſtards. 18 Eliz. c. 3. 2 Bulſtr. 348.

Stat. 21 *Jac.* 1. *c.* 27. [*A. D.* 1623. *intituled*] "An act to prevent the deſtroying and murthering of baſtard children."

"Whereas many lewd women that have been delivered of baſtard children, to avoid their ſhame, and to eſcape puniſhment, do ſecretly bury or conceal the death of their children, and after, if the child be found dead, the ſaid women do alledge, that the ſaid child was born dead; whereas it falleth out ſometimes (although hardly it is to be proved) that the ſaid child or children were murthered by the ſaid women, their lewd mothers, or by their aſſent or procurement:"

Sect. 2. "For the preventing therefore of this great miſchief, Be it enacted by the authority of this preſent parliament, That if any woman, after one month next enſuing the end of this ſeſſion of parliament, be delivered of any iſſue of her body, male or female, which being born alive, ſhould by the laws of this realm be a baſtard, and that ſhe endeavour privately, either by drowning, or ſecret burying thereof, or any other way, either by herſelf, or the procuring of others, ſo to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed: in every ſuch caſe, the ſaid mother ſo offending ſhall ſuffer death as in caſe of murther, except ſuch mother can make proof by one witneſs at the leaſt, that the child (whoſe death was by her ſo intended to be concealed) was born dead. *(2)* And this act to continue until the end of the firſt ſeſſion of the next parliament. 3 *Car. c.* 4. Continued until the end of the firſt ſeſſion of the next parliament, *and farther continued by* 16 *Car.* 1. *cap.* 4." It ſhall be murther for a mother to conceal the death of her baſtard child.

Stat. 3 *Car.* 1. *c.* 4. [*A. D.* 1623. *intituled*] "An act for repeal and continuance of divers ſtatutes."

18 El. c. 3. *Sect.* 15. "And ſo much of an act made in the eighteenth year of the reign of the ſaid late queen *Elizabeth*, intituled, An act for the ſetting the poor on work, and avoiding idleneſs, as concerneth baſtards begotten out of lawful matrimony [is continued until the end of the firſt ſeſſion of the next parliament. *Sect.* 22.] (2) With this, that all juſtices of the peace within their ſeveral limits and precincts, and in their ſeveral ſeſſions, may do and execute all things concerning that part of the ſaid ſtatute, that by juſtices of the peace in the ſeveral counties are by the ſaid ſtatute limited to be done.

Stat. 13 & 14 *Car.* 2. *c.* 12. [*A. D.* 1662. *intituled*] "An act for the better relief of the poor of this kingdom."

Putative fathers of baſtard children, running away, how to be proceeded againſt. *Sect.* 19. "And whereas the putative fathers and lewd mothers of baſtard children run away out of the pariſh, and ſometimes out of the county, and leave the ſaid baſtard children upon the charge of the pariſh where they are born, although ſuch putative father and mother have eſtates ſufficient to diſcharge ſuch pariſh; (2) Be it therefore enacted by the authority aforeſaid, That it ſhall and may be lawful for the churchwardens and overſeers for the poor of ſuch pariſh where any baſtard-child ſhall be born, to take and ſeize ſo much of the goods and chattels, and to receive ſo much of the annual rents or profits of the lands of ſuch putative father or lewd mother, as ſhall be ordered by any two juſtices of peace, as aforeſaid, for or towards the diſcharge of the pariſh, to be confirmed at the ſeſſions, for the bringing up and providing for ſuch baſtard-child: (3) And thereupon it ſhall be lawful for the ſeſſions to make an order for the churchwardens or overſeers for the poor of ſuch pariſh, to diſpoſe of the goods by ſale or otherwiſe, or ſo much of them for the purpoſes aforeſaid, as the court ſhall think fit, and to receive the rents and profits, or ſo much of them as ſhall be ordered by the ſeſſions, as aforeſaid, of his or her lands."

Stat. 6 *Geo.* 2. *c.* 31. [*A. D.* 1733. *intituled*] "An act for the relief of the pariſhes, and other places, from ſuch charges as may ariſe from baſtard children born within the ſame."

"Whereas the laws now in being are not ſufficient to provide for the ſecuring and indemnifying pariſhes and other places, from the great charges frequently ariſing from children begotten and born out of lawful matrimony: For remedy thereof, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the twenty-fourth day of *June*, After 24 June 1733 the perſon charged in the year of our lord one thouſand ſeven hundred and thirty-three, if any ſingle woman ſhall be delivered of a baſtard child, which ſhall be chargeable, or likely to become chargeable to any pariſh, or extraparochial place, or

ſhall

ſhall declare herſelf to be with child, and that ſuch child is likely to be born a baſtard, and to be chargeable to any pariſh, or extraparochial place, and ſhall in either of ſuch caſes, in an examination to be taken in writing, upon oath, before any one or more juſtice or juſtices of the peace of any county, riding, diviſion, city, liberty or town corporate, wherein ſuch pariſh or place ſhall lie, charge any perſon with having gotten her with child, it ſhall and may be lawful to and for ſuch juſtice or juſtices, upon application made to him or them by the overſeers of the poor of ſuch pariſh, or by any one of them, or by any ſubſtantial houſholder of ſuch extraparochial place, to iſſue out his or their warrant or warrants for the immediate apprehending ſuch perſon, ſo charged as aforeſaid, and for bringing him before ſuch juſtice or juſtices, or before any other of his majeſty's juſtices of the peace of ſuch county, riding, diviſion, city, liberty, or town corporate, and the juſtice or juſtices, before whom ſuch perſon ſhall be brought, is, and are hereby authorized and required to commit the perſon ſo charged, as aforeſaid, to the common gaol or houſe of correction of ſuch county, riding diviſion, city, liberty, or town corporate, unleſs he ſhall give ſecurity to indemnify ſuch pariſh or place, or ſhall enter into a recognizance with ſufficient ſurety, upon condition to appear at the next general quarter-ſeſſions or general ſeſſions of the peace, to be holden for ſuch county, riding, diviſion, city, liberty, or town corporate, and to abide and perform ſuch order or orders as ſhall be made in purſuance of an act paſſed in the eighteenth year of the reign of her late majeſty queen *Elizabeth*, concerning baſtards begotten and born out lawful matrimony."

on oath of being the father of a baſtard child,

may be immediately apprehended,

and committed to priſon, unleſs he give ſecurity.

18 Eliz. c. 3.

Sect. 2. "Provided nevertheleſs, and be it enacted by the authority aforeſaid, That if the woman ſo charging any perſon, as aforeſaid, ſhall happen to die, or be married, before ſhe ſhall be delivered, or if ſhe ſhall miſcarry of ſuch child, or ſhall appear not to have been with child at the time of her examination, then, and in any of the ſaid caſes, ſuch perſon ſhall be diſcharged from his recognizance at the next general quarter-ſeſſions or general ſeſſions of the peace, to be holden for ſuch county, riding, diviſion, city, liberty or town corporate, or immediately releaſed out of cuſtody, by warrant under the hand and ſeal, or hands and ſeals, of any one or more juſtice or juſtices of the peace reſiding in or near the limits where ſuch pariſh or place ſhall lie."

Such perſon on the woman's miſcarriage, &c. ſhall be diſcharged.

Sect. 3. "Provided alſo, and be it enacted by the authority aforeſaid, That upon application made by any perſon who ſhall be committed to any gaol or houſe of correction by virtue of this act, or by any perſon on his behalf, to any juſtice or juſtices reſiding in or near the limits where ſuch pariſh or place ſhall lie, ſuch juſtice or juſtices is and are hereby authorized and required to ſummon the overſeer or overſeers of the poor of ſuch pariſh, or one or more of the ſubſtantial houſholders of ſuch extraparochial place, to appear before him or them at a time and place to be mentioned in ſuch ſummons, to ſhew cauſe why ſuch perſon ſhould not be diſcharged; and if no order ſhall appear to have been made in purſuance of the ſaid act of the eighteenth year of the reign of her late majeſty queen *Elizabeth*, within ſix weeks after ſuch woman ſhall have been delivered, ſuch juſtice or juſtices ſhall

The juſtices, on priſoner's requeſt, may ſummon the overſeers, &c.

and if no order be made within 6 weeks after the woman's delivery, priſoner to be ſet at liberty.

ſhall and may diſcharge him from his impriſonment in ſuch gaol or houſe of correction, to which he ſhall have been committed.

The woman not to be examined relating to her pregnancy, till one month after her delivery.

Sect. 4. "Provided always, and be it further enacted by the authority aforeſaid, That it ſhall not be lawful for any juſtice or juſtices of the peace to ſend for any woman whatſoever, before ſhe ſhall be delivered, and one month after, in order to her being examined concerning her pregnancy, or ſuppoſed pregnancy, or to compel any woman before ſhe ſhall be delivered to anſwer to any queſtions relating to her pregnancy; any law, uſage or cuſtom to the contrary notwithſtanding.

Order of ſeſſion, on appeal from an order of baſtardy made by two juſtices, is final and concluſive. Cro Car. Hil 9 Car. 1 B. R. Pridgeon's caſe.

Pridgeon was brought to the bar upon an *Habeas Corpus*, and it appeared upon the return thereof, that he at *Lincoln*, upon complaint to two juſtices of the peace next adjoining, was ordered to keep a baſtard child, he being according to the ſaid order the reputed father. From this order he appealed to the next quarter-ſeſſions of the peace; at which ſeſſions the matter being examined, he was diſcharged, and the former order repealed. Afterwards at another quarter-ſeſſions of the peace, the matter being examined, it was ordered according to the firſt order, That he ſhould be accounted the reputed father of the baſtard, and ſhould keep it; and that if he did not perform it, he ſhould be apprehended and committed, and thereupon being apprehended and committed, and all this matter returned, the court held, That he being diſcharged at the next ſeſſions, to which he appealed according to the ſtatute of 18 *Eliz.* the ſecond ſeſſions hath no power to alter it. And becauſe none were there to maintain this return, he was bailed, and day given, That if other matter were not ſhewn, *&c.* he ſhould be diſcharged.—It was now moved again by *Grimſton*. And all the court, *Richardſon* chief juſtice being preſent, delivered their opinions *ſeriatim*, That the order in the firſt ſeſſions was concluding; and the order in the laſt ſeſſions was merely void; for the ſtatute of 18 *Eliz. cap.* 3. appointing, that upon appeal to the ſeſſions from an order of two juſtices of the peace, their order ſhall bind him who is adjudged to be the reputed father; and he in this caſe having appealed to the ſeſſions, and they making an order in court, that order is final, and no other ſeſſions, nor authority may meddle therewith. And to prove this *Jones* ſaid, it was reſolved by all the juſtices of *England*, upon conference, in the caſe of one *Andrew Windſore*, upon the ſtatute of 43 *Eliz. of charitable uſes.* If an appeal be upon an order of the commiſſioners of charitable uſes, to the lord keeper, and he by decree confirm the order, that confirmation is perpetually binding, and there cannot be a bill of review thereof. So it hath been reſolved, where, upon the ſtatute of 37 *Hen.* 8. for tithes in *London*, if a judgment be given by the lord mayor, and upon an appeal to the lord keeper, that judgment be affirmed, *&c.* the party is concluded and ſhall not have aid by bill of review; whereupon all the court here reſolved, That the ſecond order made at the ſecond ſeſſions was merely void, and his commitment unlawful, wherefore he was abſolutely diſcharged. And it was held, that the ſtatute of 3 *Carol.* doth not aid this caſe; for the ſtatute there is, That if the two next juſtices of peace make not proviſion for the baſtard, the juſtices of peace at their quarter-ſeſſions ſhall ſettle an order for keeping of the baſtard, as the two next

juſtices ought, but it doth not give more power or authority, nor give authority to one ſeſſions, to alter that which in a former ſeſſions was ordered.

No appeal lies from an order of baſtardy made at the quarter ſeſſions. 2 Bulſt. 355. At Glouceſter aſſizes, 20 July 13 Car. 1. 1637.

Upon a petition preferred by the ville of *Alderton*, unto Sir *William Jones* juſtice of aſſize, the queſtion being upon the ſtatute 18 *Eliz. c.* 3. touching proviſion to be made for a baſtard child. The caſe appeared to be this: One having a baſtard child, upon a complaint made of this at the quarter-ſeſſions, it was referred, according to law, unto the two next juſtices of the peace, to have the examination and ordering thereof: The next two juſtices of the peace, were theſe, (*S.*) Sir *Richard Tracy*, and Sir *John Tracy*, who heard and examined the matter, and made an order in it againſt one *John Wood* of *Beckford* in the county of *Glouceſter*, to be the reputed father of the child, and ordered him to pay and allow towards the keeping of the child weekly, 1 *s.* 4 *d.* afterwards the ſaid *John Wood* refuſeth to perform this order, but appeals to the quarter-ſeſſions, according to law; the juſtices of peace, at their quarter-ſeſſions, did re-examine the matter, and did diſallow of this former order made by the two next juſtices, and they there did make a new order of ſeſſions, by which they did charge another perſon (*S.*) one *William Cole* of *Beckford* to be the reputed father of this baſtard child: upon this the inhabitants petitioned Sir *William Jones*, juſtice of aſſize, to hear the matter againſt the aſſizes, which he accordingly ſo did, and after both the orders were read in court, *viz.* That order which was firſt made by the two next juſtices, and alſo the ſubſequent order, which was made at the quarter-ſeſſions by the juſtices of peace, *Jones* juſtice of aſſize would not enter into the re-examination of this cauſe, but did, *in omnibus*, affirm the laſt order made by the juſtices of peace at their quarter-ſeſſions upon the parties appeal to them from the firſt order; which laſt order, made at the quarter-ſeſſions, was a final order, and no appeal to be admitted againſt this order; and ſo as he then affirmed, it had been adjudged divers times, both formerly, and alſo of late time, in the *King's Bench*: In a *Lincolnſhire* cauſe, which concerned one *Pridgeon* an officer of the biſhop of *Lincoln*, who was queſtioned, and it was laid to his charge, that he was the reputed father of a baſtard child; this was there referred to the examination and ordering of the two next juſtices of peace, who, upon examination of the matter, found him to be the reputed father of the baſtard child, and ſo made an order againſt him for to make a weekly allowance towards the maintenance of the baſtard child: afterwards he appealed to the quarter-ſeſſions from their order, and the juſtices of peace at their quarter-ſeſſions, did diſcharge the ſaid order, and another was there found to be the reputed father, and an order made at the ſame quarter-ſeſſions againſt him. Afterwards at another ſeſſions of the peace upon a re-examination of the matter, another order was there made againſt the laſt order, making the ſame void; and by this order *Pridgeon* was found again to be the reputed father of the baſtard child; and ſo again ordered to make a weekly allowance towards the maintenance of the ſaid child; afterwards *Pridgeon* appeals again unto the judges of the *King's Bench*, and there, upon a re-examination of the matter, it was clearly reſolved by all the judges there, that *Pridgeon* was to be freed and diſcharged of and from the payment of the 2 *s.* a week by the ſecond order made at the quarter-ſeſſions, the ſame order being altogether

gether illegal; and that the firſt order made by the juſtices of peace at their quarter-ſeſſions, upon the appeal firſt to them, ſhould ſtand in force, and that no appeal ſhould be admitted againſt this order, ſo made upon the firſt appeal, which was a legal order, and the ſame to be final, and not to be altered by the judges of aſſize; and ſo it was then reſolved by all the judges of the *King's Bench*. And Sir *William Jones*, juſtice of aſſize, affirmed the former order, made by the juſtices of peace at their quarter-ſeſſions. And ſo it ſhall be alſo upon the ſtatute of 43 *Eliz. cap.* 4. touching charitable uſes: If the commiſſioners make an order and a decree in the caſe, and upon an appeal to the lord keeper, and exceptions put in before him to this decree, and upon hearing of them, the decree made by the commiſſioners is confirmed by the lord keeper, this decree is now by this made to be final, and that no ſubſequent appeal is afterwards to be admitted in this caſe, after this confirmation of the former decree by the lord keeper: No more ſhall it be here admitted to appeal from this order thus made at the quarter-ſeſſions of the juſtices of peace, but that this ſhall be final, and therefore this order by them thus made at their quarter-ſeſſions upon the appeal to them from the order made by the two next juſtices of peace, ſhall be now final and ſtand in force; and this is to be performed by the party ordered, without other re-examination, or alteration of the ſame; and this was accordingly ſo ordered by him.

The juſtices of the ſeſſions have power and authority *originally*, to make any order in the caſe of baſtardy. Cro. Car. 470. Paſch. 13 Car. 1. Slater's caſe.

William Slater was, by *Elizabeth Eaton*, charged with the getting of a baſtard child on her body. The two next juſtices did not make any order in it, according to the ſtatute of 18 *Eliz.* but the cauſe came firſt to be originally heard at the general ſeſſions of the peace at *Spaulding* in the county of *Lincoln*, 13 *July* 8 *Car.* where the juſtices ordered, That whereas it was proved by witneſſes, that one *Alexander Leigh* had often uſed private company with the ſaid *Elizabeth Eaton*, and had confeſſed that he had done as much as a man could do to a woman; and that ſhe had ſaid, that *Leigh* had the uſe of her body, and that ſhe feared ſhe was with child by him; That thereupon *Slater* ſhould be diſcharged of the child, and ſhe be committed to the houſe of correction during her life; and that *Alexander Leigh*, the reputed father, ſhould pay from the birth of the child, to the churchwardens of *Pinchback*, weekly 14*d.* towards its maintenance, until the age of fourteen years; and the overſeers then to take the child. Afterwards 1 *Auguſt* 12 *Caroli*, at the aſſizes at *Lincoln*, upon complaint of the inhabitants of *Pinchback* to the judges, they ordered, that two of the next juſtices to the pariſh where the child was born (naming them,) ſhould take conſideration thereof, according to the ſtatute, and ſettle ſuch courſe therein, as to juſtice appertained; whereupon thoſe two juſtices *primo Martii* 12 *Caroli*, declared the ſaid *William Slater* to be the reputed father, and that he ſhould pay (the child being five years old, and all that time having been maintained at the pariſh charge) at one payment 18*l.* to the overſeers of the pariſh, and 14*d.* weekly till the child came to fourteen years of age, and to give his bond of 50*l.* for performance thereof: And the ſaid *Slater* refuſing to pay, or give bond, the ſaid juſtices

tices of peace committed him. Whereupon he ſued out a *Certiorari* to remove the proceedings into this court, who appearing upon an *Habeas Corpus*, and upon reading of the return, and hearing counſel on both ſides, *Grimſton* being of counſel for the ſaid *Slater*, theſe points were reſolved by the whole court. Firſt, that before the ſtatute of 3 *Caroli cap.* 4. the juſtices at the ſeſſions had no authority to meddle in the caſe of baſtardy, till the two next juſtices according to the ſtatute of 18 *Eliz. cap.* 3. had made an order therein: and that then, and not before (the party refuſing to perform the order, upon his appeal giving reaſonable ſecurity to appear at the next ſeſſions, and abide ſuch order as the juſtices there, or the more part of them ſhould make, *&c.*) the juſtices of the ſeſſions might make a new order, *&c.* otherwiſe not. Secondly, That by the ſtatute of 3 *Car. cap.* 4. [See p. 322.] the juſtices of the ſeſſions have power and authority originally, to make an order in the caſe of baſtardy; for the words of the ſtatute are, *viz.* That all juſtices of the peace within their ſeveral limits and precincts, and in their ſeveral ſeſſions, may do and execute all things concerning that part of the ſtatute touching baſtards, begotten out of lawful matrimony, that by juſtices of the peace in the ſeveral counties, are by the ſaid ſtatute limited to be done. And therefore the firſt order made by the ſeſſions was in this caſe good and legal, and the ſecond order made by the two next juſtices, void, and could not alter or revoke the order which was firſt made by good authority. And for proof thereof one *Pridgeon*'s caſe [See page 324.] was cited. Thirdly, It was objected, that the commitment of *Elizabeth Eaton* for life, for her firſt offence, was more than the juſtices had authority to do; and therefore the order void. But it was reſolved, That an error in part, and in that part of the order which only concerned her, ſhould not vitiate the whole order.

The juſtices in ſeſſions have no power to commit a perſon for diſobeying an order made by them on appeal from an order of baſtardy made by two juſtices.

Upon a *habeas corpus Hammond* appeared, the return thereof being read, it appeared that he was committed and detained in priſon in the county of *Oxon.* *Littleton* moved the court for *Hammond*, for his diſcharge, the ground of his commitment being not good, the ſame not being done in a due and legal manner, being upon the ſtatute of *Eliz. cap.* 3. made for proviſion for baſtard children; *Hammond* having got a baſtard-child. By the ſtatute of 18 *Eliz. c.* 3. (ſee page 320) this is to be referred unto the examination of the two next juſtices of the peace, for to examine, and order the ſame; they accordingly did examine the matter, and made their order therein, which if the party refuſe to perform, or to enter into bond, to appear at the next quarter-ſeſſions, then they are to commit him to priſon, without bail or mainprize. *Hammond* accordingly entered into this bond, and after, at the next quarter-ſeſſions, where he appeared, the juſtices there, did make another order, and becauſe he did refuſe to perform this, they did there commit him to priſon; which impriſonment thus by them was illegally done, this being out of their power; they having no ſuch power given them, by the ſtatute; but upon his refuſal to perform their order, they ought to have purſued their ordinary remedy againſt him, (*S.*) upon his bond entered into, but not by ſuch commitment. *Hide chief juſtice:* The juſtices ought not here to have committed him, for not performing of their order made at the quarter-ſeſſions; where they do

2 Bulſt. 341. Mich. 3 Car. 1. B. R. The King againſt Hammond.

do alter the former order; by this the firſt order made by the two next juſtices of peace is diſannulled, and made void, but in this caſe, *Jones*, *juſtice* of aſſize, by aſſent did make this order, that he ſhould pay 10 *l.* this order was certified: afterwards, Sir *Henry Poole* did commit him, for not performing the order of the quarter-ſeſſions; the court being of all this informed, granted a *habeas corpus* to remove the body, and the cauſe of the proceedings had againſt him; this all appearing unto the court, upon the return of the *habeas corpus*, and that this impriſonment was illegal, by the rule of the court he was bailed.

A woman having two baſtards ſhall not be proceeded againſt upon the ſtat. 7 Jac. 1. c. 4. as for her *ſecond* offence, not having been puniſhed for her *firſt* offence. 2 Bulſt. 318. at Salop aſſizes, 19 Mar. 7 Car. 1.

At *Salop* aſſizes, before Sir *William Jones* juſtice of aſſize, this matter happened before him on the crown ſide, upon the ſtatutes of 18 *Eliz. cap.* 3. and 7 *Jac. cap.* 4. (See *page* 321.) touching baſtard children. This queſtion was propounded by Sir *John Corbet*, a juſtice of the peace, unto Sir *William Jones* juſtice of aſſize, upon theſe ſtatutes; by the firſt ſtatute puniſhment is to be inflicted; and by the ſecond ſtatute, if ſhe offend the ſecond time, then ſhe is to be ſent to the houſe of correction for one year, and to put in ſureties for her good behaviour, and not to offend again. Upon this, the caſe propounded was, that one had a baſtard child, but ſhe was not queſtioned for it, no proceedings being had againſt her upon the ſtatute of 18 *Eliz. cap.* 3. Afterwards ſhe had a ſecond baſtard child; the queſtion now propounded was, whether ſhe ſhall now be proceeded againſt upon the ſtatute of 7 *Jac. cap.* 4. as for her ſecond offence, ſhe not having been puniſhed for her firſt offence; whether this ſecond offence ſhall be now taken for the firſt offence, or not. *Jones* juſtice: She ſhall not be puniſhed upon the ſtatute of 7 *Jac. cap.* 4. as for her ſecond offence, unleſs ſhe had been before queſtioned and puniſhed for her firſt offence: but ſhe might have been puniſhed for her firſt offence, either by the ſtatute of 18 *Eliz. cap.* 3. or by the ſtatute of 7 *Jac. cap.* 4. but is not to be puniſhed by the ſtatute of 7 *Jac.* as for her ſecond offence, unleſs ſhe hath been before puniſhed for her firſt offence; but this ſecond offence ſhall be now deemed and taken to be as her firſt offence, and ſo is to be puniſhed for the ſame according to the law.

Order of two juſtices to pay ſo much a week to the pariſh until the child ſhould be 12 years of age, not good, becauſe the father may maintain it. 1 Vent. 48. Mich. 21 Car. 2. B. R. Burwell's caſe.

Upon complaint to two juſtices about a baſtard child; they by the 18 *Eliz.* order one *Reynolds* to keep the child; upon this *Reynolds* appeared at ſeſſions; where they vacated the order, and referred it back again to the juſtices, who do nothing in it. The next ſeſſions after *Burwell* is judged the reputed father, and ordered to pay ſo much a week to the pariſh, until the child was twelve years old. This was removed into the *King's Bench* by *certiorari*. And they reſolved, that the referring back again to the juſtices, by the juſtices at ſeſſions, was not warranted; and that the laſt order was inſufficient, becauſe it was that he ſhould pay the pariſh ſo much a week until the child was twelve years old, whereas the father might take it always when he pleaſed; but it ought to have been that he ſhould allow ſo much a week ſo long as it ſhould be chargeable to the pariſh; wherefore they bound the parties to appear at the next ſeſſions by recognizance.

By

By *certiorari*, an order for the keeping of a baſtard child by the juſtices of the peace, in purſuance of the ſtatute of 18 *Eliz.* was removed into this court, which was excepted to. Firſt, for that they had ordered the father to allow 4 *s.* to the midwife; whereas it did not appear, that the pariſh had procured her, or that they were chargeable with it. Secondly, for that they ordered 7 *s.* a week, to be allowed for the nurſing, cloaths, *&c.* of the child, until it ſhould be able to get its living by working; which was ſaid to be exceſſive in the ſum, and uncertain for the time, for it ſhould have been for ſo long time as he ſhall be chargeable to the pariſh. *Hale* ſaid, that they could make no allowance to the midwife, unleſs in diſcharge of the pariſh. *Twiſden* ſaid, that they could not order the 7 *s.* a week to be paid until it ſhould be able to get its living; for perhaps the father would take it away and maintain it himſelf, which he may do if he pleaſe; but that the order may be quaſhed without more delay, and the matter remanded to farther examination, *Sherman* conſented to pay all the arrears of the 7 *s.* a week, and the coſts that had been expended in maintenance of this order, or what more ſhould be laid out, in caſe he ſhould be again found the reputed father of the child, for he ſaid it was impoſed upon him by combination; whereupon it was quaſhed.

Order to pay ſo much a week till the child ſhould be able to get his living by working, not good; becauſe the father may take and maintain the child himſelf. 1 Vent. 210. Paſch. 24 Car. 2. in B. R. Sherman's caſe.

Richards and *Samon*, being churchwardens, brought an action againſt *Hodges*, on his bond in the uſual form to indemnify the pariſh in the caſe of a baſtard child. The defendant pleaded *non damnificatus* generally. The plaintiffs replied, that neither the defendant nor any other, for the ſpace of one month after the making of the bond, did provide any maintenance for the child; by reaſon whereof the pariſhioners, to prevent the ſaid child's periſhing by hunger and cold, were forced for all the time aforeſaid to pay, and have paid 4 *s.* for the maintenance and nouriſhment of the ſaid child. To which the defendant rejoined, that he would have nouriſhed the ſaid child at his proper coſts and charges for all the time aforeſaid, and offered ſo to do, but they refuſed to permit him, and of their own wrong, and againſt the will of the defendant, put the ſaid child to nurſe, and paid the ſaid 4 *s.* Upon which rejoinder, the plaintiffs demurred in law. And by the court, the rejoinder is not good, becauſe it is a departure from the firſt plea in bar; for the defendant in his plea ſays, that the pariſhioners were not damnified, and when the plaintiffs by their replication ſhew how they were damnified, there the defendant cannot rejoin that this damnification was of their own wrong, as here he hath done, but he ought to have pleaded that at firſt in his plea in bar. And tho' it was urged by *Saunders* for the defendant, that this was no damnification at all, becauſe it was the voluntary act of the pariſh to put the child to nurſe, when the defendant himſelf offered to maintain it, and that they ought not to take advantage of their own wrong; yet it was not allowed: for the court held clearly, that the rejoinder was a departure; and for that reaſon, it was adjudged for the plaintiffs.

Action brought on bond to indemnify pariſh from a baſtard child.—Pariſh not damnified when the father offers to maintain his baſtard child. 2 Saund 83. Trin. 21 Car. 2. B. R. Richards and others againſt Hodges.

Debt upon a bond, with a condition to indemnify and ſave harmleſs the pariſh of *Eling* from a baſtard child. Plea; that the defendant had

The right way to make an order of baſtardy is, *ſe*

Eng at the child ſhall be chargeable. ——Father may maintain the child himſelf. 1 Bu. Juſt. 182. cites Trin. 27 Geo. 2. in B. R. Newland and Oſman.

maintained, ſupported, and nouriſhed the ſaid child to a certain day, that is to ſay, to the 27th of *October* laſt, and that then he offered to take the ſaid child to maintain, which they refuſed, and that if the churchwardens or any of them have been damnified, it is of their own wrong. Replication; that for three weeks from and after the ſaid 27th day of *October*, the defendant did not provide nouriſhment for the child, but failed, and by reaſon thereof the plaintiffs, after the three weeks, expended 3 *s.* for the maintenance of the child, and ſo were damnified. Demurrer; and joinder in demurrer. The queſtion of law is, Whether a putative father may take a baſtard child into his own cuſtody to maintain it, or whether the pariſh ſhall have the care of it? And the caſe in 2 *Saund.* 83. was mentioned, wherein the court held this to be a good plea. 1 *Ventr.* 48. that the father may maintain the child himſelf. 1 *Ventr.* 210. that the juſtices can only make an order to maintain, ſo long as the child ſhall be chargeable.——By *Lee* Ch. J. The right way is, to make the order, ſo long as the child ſhall be chargeable. It is not to be limited to any certain time. And the reaſon given in all theſe caſes is, that the father or mother may take it before the time. The intention of the ſtatute of *Elizabeth* was, to have a proviſion for the baſtard, and at the ſame time to indemnify the pariſhes. And the law could never think of taking the care and education of children from their parents. Nor could this enter into the mind of any judge. Nouriſhing and maintaining certainly anſwers education. It hath been objected, that the excuſe is collateral: I do not think ſo; for all the inhabitants are parties, and the overſeers are but truſtees for them. It ſeems a ſufficient excuſe; and there is no anſwer on the part of the plaintiff to it. No objection has ever been thought of to pleas of this kind. ——*Wright* J. In the caſe in *Saunders*, it ſeems to have been admitted, that if this had been pleaded in the *firſt* inſtance, it would have been good. I never did hear before, that the care of the child devolved upon the pariſh, where there was any other perſon to take care of it. They are obliged to maintain the child, where it is in danger of ſtarving. This court has conſtantly held, that the father has a right to take it away, by quaſhing the orders made in manner above-mentioned. This is not a collateral excuſe; but ſuch an one as will ſave the penalty. And I cannot ſee that the pariſh has any ſort of right or intereſt in the child. *Denniſon* J. The material objection taken to this plea is, whether or no the putative father of a baſtard child can by the law of *England* take his baſtard child from the pariſh? I never did hear this doubted before. And I think that the notion that he cannot, is not to be countenanced nor encouraged. The law does not ſuppoſe, that a man will not maintain his own child. It is ſaid, the next heir is not to be truſted with the guardianſhip. I am ſorry that was ever introduced into the law of *England*. It is an injurious notion of the people of *England*. I will rather ſuppoſe, that the pariſh officers will be cruel to the child, than the father. All the caſes admit tacitly that the father hath ſuch a power. And ſome of them ſay ſo expreſly. And I am very well ſatisfied that the law is ſo. Inhabitants, churchwardens, overſeers, are all the ſame; and every part of the condition

tion is anſwered. I have known this plea very often pleaded. And that caſe in *Sanders* is the rule.——*Foſter* J. I am not ſo clear in theſe points. I think the care of educating baſtard children, is not to be conſidered as a burthen on the pariſh, but as a truſt; and that it ſhould not be ſo eaſy for fathers to take them out of their care and cuſtody. The ſtatute is expreſs, that the juſtices ſhall order the father to contribute to the pariſh for the maintenance of the child. Though it is not to be ſuppoſed that fathers will deſtroy their baſtard children, yet they may look upon them as a burden and a ſhame, and therefore either neglect them, or put them into improper hands. The reſolutions and orders of juſtices of the peace have been grounded upon this; not for requiring ſecurity till the child came to a certain age, but becauſe the orders extended the age too far. Therefore I am not ſo clear. The caſe in *Saunders* was only his own opinion.——Judgment for the defendant, unleſs deſired to be argued again this term. (This was at the deſire of the plaintiff's counſel.)

An information denied againſt a juſtice who made an order without ſummoning the party, becauſe the order, though in nature of a judgment, is yet not ſtrictly a conviction. 1 Seſſ Ca. 179. Trin. 6 & 7 Geo. 2. The King againſt Cotton.

Motion for an information againſt the defendant, who with another juſtice made an order of baſtardy upon one *Fitzgerald*, without ſummoning him to appear before them to make his defence; upon appeal to the ſeſſions he was acquitted, and put to great expences, which it was inſiſted was contrary to natural juſtice. By 18 *Eliz. c.* 3. the juſtices, upon examination of the cauſe and circumſtances, may make an order according to their diſcretion. *Mich.* 13 *Geo.* 1. The King againſt *Cleg*. The King againſt *Holland*. The King againſt *Venables*. The King againſt *Squire* and *Allington*, *Hill.* 12 *Geo.* 1. and ſummons is as old as the creation. 3 *Gen. v.* 9. On a rule to ſhew cauſe, ſerjeant *Corbet* for the defendant: On penal ſtatutes the defendant has only a time in the firſt inſtance to make his defence; but in caſes of baſtardy it is different, for he has a proper time by the ſtatute given to be heard at the ſeſſions; it is no more neceſſary to have notice here than on an indictment.

But by Mr. juſtice *Page*: This is a judgment, the other is no more than a charge; it would not be neceſſary in caſes of removal, to give notice to the pariſh to whom the pauper is ſent, which is never done. *Mich.* 4 *Geo.* 1. The King againſt *Blackwell*. Order of baſtardy good, though it did not appear the party was ſummoned. Sir *Thomas Abney* on the other ſide: This is an adjudication, and equal to a conviction; an indictment is only a charge till the judgment. Mr. ——— ſerjeant *Hayward*: Examination is requiſite by the ſtatute. Mr. juſtice *Page*: No man in an office can be ſuppoſed to be ſo ignorant as not to know it is againſt natural juſtice to convict a man without a ſummons; the examination ought to be ſo made, that the truth may appear, and that muſt be by examining both ſides, otherwiſe it is partial; the ſcandal, the expence, and the diſorder in Mr. *Fitzgerald*'s family, are things that ought to be conſidered; here was no taking by warrant, and therefore an action of falſe impriſonment would not lie; and this is the only method can be uſed to puniſh the juſtice. Mr. juſtice *Probyn*: The principal objection about a ſummons is right in law, and in reaſon; though

appeal is given, yet the order is a judgment, and puts the man under difficulties; poſſibly an action on the caſe might be framed; this may poſſibly have been only an error in judgment; hard to grant information. Mr. juſtice *Lee:* If this was ſtrictly a conviction, an information ought to be granted; but it is otherwiſe in the caſe of orders; and no ſummons was then held to be neceſſary to be ſet out; I do not give any judgment where a ſummons is neceſſary, and it is doubtful whether this ſummons is neceſſary. Diſcharged the rule. And if juſtices take up a man by warrant for being putative father, they may bind him over to ſeſſions without making an order; and the ſeſſions may make an original order.

Seſſions may make an original order.

Report of the preceding caſe from a manuſcript. Trin. 6 & 7 Geo. Rex v. Sir John Cotton.

Mr. *Hayward* moved for an information againſt the defendant a juſtice of peace, for making an order of baſtardy upon a man, without ſummoning him, or hearing what he had to ſay againſt it. *Lee* juſtice doubted whether it was neceſſary to ſummon the reputed father; therefore the court ordered Mr. *Hayward* to look into precedents, and move it at another day; and ſome days after, he informed the court that he had looked into this matter, and that the ſtatute 18 *Eliz. c.* 3. was what the juſtices went upon; and that act directs an examination of the *cauſe and circumſtances*; and *that*, he ſaid, could not be done, unleſs *both* ſides were heard: and tho' the act ſays, *they ſhall take order by their diſcretion*, yet that diſcretion muſt not be arbitrary, but controuled by the rules of law. And he cited the *R.* and *Gregg*, *Mich.* 13 *G.* 1. *R.* v. *Holland*, *Trin.* 5, 6 *G.* 2. *Rex* and *Venables*, 11 *G.* 1. and ſaid it was contrary to common juſtice, to condemn a man unheard. Serjeant *Corbet* on the other ſide ſaid, that the man was ſerved with the order, and was heard at the ſeſſions, upon his appeal; and the order againſt him, was diſcharged.——*Page* juſtice ſaid, What ſatisfaction is that to the man, for the trouble and coſts he had been at upon his appeal, when perhaps, if he had been ſummoned, he might have ſhewn good cauſe before the juſtices, ſo that no order at all, would have been made. Court ordered him to ſhew cauſe. This caſe coming now on again, *Baines* ſerjeant for the defendant ſaid that this was a caſe of the firſt impreſſion, and that a ſummons was not neceſſary, becauſe the party has a right of appealing; and the oath of the woman, is a ſufficient foundation for the juſtices to go on; and that if ſummons was neceſſary, it would be neceſſary to ſet it forth in the order; and yet it is held well without it, *Rex* and *Blackwell*, *M.* 7 *G.* 1.——'Tis the common practice not to ſummon. *Probyn:* 'Tis always cuſtomary to make a warrant, and to bring the party before a juſtice, upon the oath of the woman. *Page:* Upon the oath of the woman, the juſtice grants his warrant, and ſo is the cuſtom. *Baines* ſerjeant: The juſtice can't grant a warrant on the oath of the woman, before the child is born. *Page:* That is true, becauſe till the child is born, the ſtat. 18 *Eliz.* gives the juſtices no juriſdiction. *Baines* ſerjeant:—But if the juſtice has done wrong, 'tis not a ſufficient ground for an information; for it does not appear here was any fraud, but a mere error in judgment. *Abney:* 'Tis admitted that on conviction on a penal law, a ſummons is neceſſary. This is a formal adjudication, and tho' not called a conviction in the ſtatute, yet it is of the ſame nature; and informations are uſually granted for this offence.

offence. *Rex* and *Venables*, 12 *G.* 1. That was a conviction for ſelling ale without a licence. *Rex* and *Allington*, mayor of *Hertford*, *M.* 11 *G.* 1. on affidavit that there was no ſummons, an information was granted. The reaſon why a ſummons is not neceſſary on an indictment is, becauſe that is only an accuſation. But this is a judgment. As to the inconvenience of its giving the party an opportunity of going off, that is no reaſon why the party ſhould not be heard. *Hayward:* The act chalks out the method how the juſtice ſhall proceed, *viz.* he ſhall examine, and that muſt be on hearing of *both* ſides. *Rex* and *Gregg*. *Rex* and *Holland*. Theſe caſes I cited laſt term, and neither of them is anſwered; and tho' there the court ſaid, they would intend the juſtice did right; yet they ſaid in caſe the contrary appeared, they would puniſh him. *Rex* and *Hebar*. *M.* 5 *G.* 2. *Page:* This court is always tender of granting informations againſt juſtices of the peace; and that there is a great difference, where he exerciſes his juriſdiction maliciouſly, and where he is guilty only of an error in law. I think no man can be ſo ignorant of the law and natural juſtice, as to think that no ſummons is neceſſary. The man in this caſe is put to great charges, and great expence of reputation. I think Mr. *Hayward*'s conſtruction of the act is right. But I doubt whether an information in this caſe, ought to go or not: but I would have it underſtood that there ought to have been a ſummons. *Probyn:* This is the firſt inſtance of complaint of this nature. Common law and juſtice require that there ſhould be a ſummons; and tho' the party has liberty of appeal, yet the firſt is a judgment; and therefore the juſtice has done wrong; and I hope the juſtices (eſpecially thoſe of *Middleſex*) will take notice of it. But I think this way of proceeding by information is not the only method the party has; for a ſpecial action may poſſibly be framed; and as here does not appear to be any wilfulneſs, and therefore may poſſibly be only an error in law, I am againſt granting this information. *Lee:* If that is a conviction, I think the juſtice ought to be puniſhed; but I think that a diſtinction has always been taken between an order and a conviction; and that in the laſt a ſummons is neceſſary, and will never be intended; but I queſtion whether a ſummons is neceſſary on an order. By ſtat. 3 *Car.* 1. The ſeſſions have an *original* juriſdiction in caſe of baſtardy. *Page:* The rule muſt be diſcharged. But I would have it underſtood that it is my opinion, that ſummons is neceſſary.—See 6 *Mod.* 41. where *Holt* C. J. held a ſummons neceſſary, and that it was abominable to convict a man behind his back.

Information moved for againſt juſtices, for making an order of baſtardy on a perſon, upon pretence that he was not ſummoned, but the contrary appear-

Motion for an information againſt the defendants, two juſtices of *Devonſhire*, for making an order on one *Nicholas Mould*, adjudging him to be the putative father of a baſtard child, without ſummoning him, and alſo for refuſing to hear his witneſſes. Sir *Thomas Abney* ſhewed cauſe, and ſaid he was ſummoned by Sir *George Chudleigh*, a third juſtice of the peace, to appear at the next monthly meeting of juſtices; that then the mother came, and his witneſſes, but *Mould* not appearing, the juſtices would not hear the witneſſes; becauſe the man himſelf was not there. But upon examination of the woman, they then made this order, why he gave notice

ing, it was denied. 2 Seſſ. Ca. 192. Eaſt. 8 G. 2. The King againſt Taylor and Neale.

tice of appeal to the ſeſſions, and did not appear there? Order properly confirmed. Lord chief juſtice: Suppoſing the man was ſummoned, and did not appear, the juſtices are not then bound to hear any evidence for him; and this court will not hear any evidence in behalf of a perſon who ſhould attend here, and does not. By *the court:* The man did not attend at the next ſeſſions, as he ought to have done. Lord *chief juſtice:* It does not appear to me that theſe juſtices have acted criminally, but on the contrary this complaint appears to be groundleſs. *Mould* appeals to the ſeſſions, and deſerts that appeal, and does not complain here till *Cole* the conſtable, who was to ſerve the ſummons, had been dead a year. The juſtices alſo ſwear they ſaw a ſummons under the hand of Sir *George Chudleigh*, which a third juſtice might grant. Beſides it appears on affidavits, that *Mould*'s father and mother attended to give evidence for him, which ſhews he had notice, though not ſtrictly, that he was ſummoned, yet lying by until after the death of the conſtable, ſtrongly implies it. Indeed if any real excuſe had been made, as that the man was ſick, the juſtices ſhould have deferred it; but no reaſon at all here to do it; and thought the rule ought to be diſcharged with coſts.

Theſe juſtices have no more to do than to enquire into the probability of ſummons, and they ſwear expreſly that *Cole* was duly ſworn to the ſervice of the ſummons; therefore it muſt be underſtood, that there was a proof actually made of the ſervice of the ſummons. Rule diſcharged with coſts.

Marriage doth not exempt the mother of a baſtard child from contributing towards his maintenance. 1 Bu. Juſt. 180. cites Eaſt. 5 G. 3. Ellen Bent's caſe.

If the mother ſhall marry before any order made, it hath been doubted whether the juſtices can then charge her, as having no effects of her own, the ſame, by the marriage been veſted in the huſband. As in the caſe of *Ellen Bent*, *E.* 5 *G.* 3. ſhe was delivered of a baſtard child in the pariſh of *Clifton*. After which, and before any order made, ſhe married one *Abraham Taylor* of the pariſh of *Middleton*. The overſeers of *Clifton* apply to the juſtices, who made an order of filiation, charging her with 8 *d.* a week towards the relief of the pariſh. She pleaded her utter inability, and refuſed to pay. Upon which the juſtices commit her to the houſe of correction. She was brought up by *habeas corpus*, and her counſel moved for her diſcharge, inſiſting upon the illegality of her commitment; for that, being a married woman, ſhe was not an object of the juſtices juriſdiction. But it was reſolved by the court, that marriage doth not exempt the mother of a baſtard child from the power of the law. And ſhe was remanded.

Order of baſtardy quaſhed, being made three years after appeal. 1 Seſſ. Ca. 234. Trin. 1 Geo. 2. The King againſt the Inhabitants of Arundel.

Two juſtices make an order that defendant ſhould pay a *ſum in groſs*, and alſo 2 *s. per* week for ſo long as the child ſhould be chargeable; the party appeals to the ſeſſions, who confirm the firſt order; at a ſubſequent ſeſſions the father of the baſtard deſired to have the keeping of the child, and that the payment of the 2 *s. per* week ſhould ceaſe, which the ſecond ſeſſions ordered. Motion was made to quaſh this laſt order of ſeſſions, becauſe in this caſe they had no juriſdiction. If an order of baſtardy be made by two juſtices, then an appeal lies to the ſeſſions; but where an original order is made at the ſeſſions, there can be no appeal to another ſeſſions, which deprives the party of a means to examine the firſt judg-

ment. Now the *court held*, that the ſecond ſeſſions had no authority to order the ſubſtraction of the two ſhillings a week, for it was no ſecurity to the pariſh; indeed this order was quaſhed; becauſe it was made out of time three years after appeal, therefore juſtices had no juriſdiction.

Order of baſtardy charges the father, though he has been runaway 14 years. 1 Seſſ. C. 83. Mich. 1 Geo. 1. King againſt Miles.

On a motion to quaſh an order of baſtardy, it was reſolved, that if the father run away, and returned, though fourteen years after, yet an order to fix the child on him is good notwithſtanding the ſtatute of 13 & 14 *Car.* 2. *c.* 12. (See *page* 322.) gives a power to juſtices to make an adjudication behind his back, and to charge his effects, for there is no ſtatute of limitation as to theſe caſes; nor is there one inſtance where juſtices have been reſtrained. An order to diſburſe the pariſh charges they have been at ſince the birth of the child, is good even for thoſe charges the pariſh is at, ſubſequent to his age of years. It muſt appear in what pariſh the child was born, and that the birth was in that pariſh in whoſe aid the order is made. It is not neceſſary to fix the day of his birth in the order. It is enough to ſay in the order; that the child is a baſtard, without mentioning the ſtate of the woman, whether ſingle, &c. Security to indemnify the pariſh is proper. Security ſhall not be given for the performance of an order, till contempt of the firſt order.

Before ſtat. 26 Geo. 2. c 27. there muſt have been a *quorum* in an order of baſtardy by borough juſtices. 2 Stran. 974. Eaſt. 7 G. 2. Rex v. Heſlop.

An order of baſtardy made by two juſtices of the borough of *Richmond* in *Yorkſhire* was quaſhed for want of *quorum unus*: though 3 *Car.* 1. *c.* 5. was inſiſted on, where juſtices in precincts have power to execute the 18 *Eliz. c.* 3. as juſtices in the county do; which, *per curiam*, muſt be in the ſame manner. *Quaere tamen*, ſo many charters have no *quorum*.—— Many orders have been formerly quaſhed, for want of ſetting forth that one of the juſtices was of the *quorum*; but now by the ſtatute 26 *Geo.* 2. *c.* 27. no order ſhall be quaſhed for that defect *only*.——See ſtat. 7 *Geo.* 3. *c.* 21. under title *Apprentices*, in *page* 111.

Two juſtices cannot acquit a man charged with a baſtard. 2 Stran. 1050. Trin. 9 G. 2. Rex v. Jenkins.

Two juſtices made an order, reciting that the defendant had been charged with being the father of a baſtard child, and that upon examination into the matter, they were of opinion he was not ſo; and do therefore adjudge he be acquitted thereof. And the court upon conſideration were all of opinion, that the juſtices had gone too far; for their whole authority is under 18 *El. c.* 3. whereby they are only impowered to take order for the relief of the pariſh, and puniſhment of the offender; but have no power to acquit the party, or convict him finally: which appears likewiſe from their proceedings being in *Engliſh*, where they are not required to ſet out the evidence, or ſhew a ſummons. The ſeſſions indeed on 3 *Car.* 1. *c.* 4. *ſect.* 15. may make a final order; and after a man is diſcharged by one ſeſſions, a ſubſequent ſeſſions cannot take it up again, as was held *Mich.* 13 *Geo.* 1. *Rex* v. *Tenant*. And it would be greatly inconvenient, the juſtices ſhould have ſuch a power; becauſe the pariſh cannot appeal: the defendant indeed may, not by virtue of expreſs words, but in conſequence of the clauſe about giving ſecurity to abide the order of ſeſſions, if the party does not ſubmit to the order of two juſtices. And though a man may hereby be liable to be harraſſed in being carried before ſeveral juſtices, that is a leſs evil than the other: and beſides, this court is open,

if

if any thing ſhould be done to the manifeſt oppreſſion of the party. The order was quaſhed.

A baſtard is within the ſtatute of P. & M.

The court granted an information againſt the defendants, for taking away a natural daughter under ſixteen, under the care of her putative father; being of opinion, it was within the third ſection of ſtat. 4 & 5 *P. & M. c.* 8.

A baſtard is intended to be born where the order ſtates him to be baptized. 2 Stran. 1166. Eaſt. 15 G. 2. Rex v. Moravia.

An order of baſtardy ſtated, that the woman was *delivered of a child baptized in the pariſh of* A. and it was objected, that this does not import it to be born there, which is the only circumſtance to warrant the pariſh's applying for relief. But the court ſaid, that by a reaſonable conſtruction it may be ſo underſtood, and confirmed the order.

Baſtard of a certificate perſon is ſettled where born. 2 Stran. 1168. Trin. 15 Geo. 2. Between the pariſhes of Lydlynch and Hilton.

The caſe of *New Windſor* and *White Waltham*, *Trin.* 5 *Geo.* 1. turning chiefly on the certificate's being concluſive to the pariſh which gave it, and certified two perſons as man and wife; it now came under debate again, and was determined, that the baſtard of a certificate perſon is ſettled where born, and is not *a child* to be ſent back within the meaning of the ſtatute.

When a wife marries a ſecond huſband, and it is found the firſt had no acceſs to her for a long time, the children of the ſecond marriage are baſtards, and the wife's ſettlement where the firſt huſband's was. 1 Stran. 51. Eaſt. 3 G. 1. Between the pariſhes of St. Andrew and St. Brides.

Order of ſeſſions for the removal of a wife and three children from the pariſh of St. *Andrew* to the pariſh of St. *Brides*, ſetting forth, that *A.* about twenty-three years ſince married *B.* and lived with her five years in the pariſh of St. *Brides*, and had by her four children, two whereof were dead, and the other two provided for. That at the end of five years he went away from her, and married another woman, with whom he lived ſomewhere in *England*; but that he never ſaw his firſt wife *B.* from the time of his going away. *B.* after the ſeparation (having heard nothing for a long time of *A.*) married a ſecond huſband, by whom ſhe had eight children in the pariſh of St. *Andrew*, who all went by the name of the ſecond huſband; five of them are dead, and the other three ſurvive. And the ſeſſions preſuming that the ſecond marriage of the wife is void *ab initio*, adjudge, that her ſettlement, and that of her three children, is in the pariſh of St. *Brides*, where the firſt huſband lived, as deeming the children the illegitimate iſſue of the firſt marriage. The court quaſhed the order as to the children, and confirmed it as to the wife. Firſt, becauſe the ſecond marriage, and living with the ſecond huſband in St. *Andrew*'s was void *ab initio*; and therefore the place of her ſettlement was where the firſt huſband lived. Secondly, It being adjudged that the firſt huſband had no acceſs for ſeventeen years, no preſumption ſhall be admitted but that theſe are the children of the ſecond marriage; and they not being born in the pariſh of St. *Brides*, nor ever having inhabited there forty days, can have no ſettlement in St. *Brides*. 1 *Roll. Abr.* 358. *pl.* 1. 8. *pl.* 4, 5. *Braſt. lib.* 5. *fol.* 417. *Co. Litt.* 123. *b.* 2 *Roll. Abr.* 356. *Cro. Jac.* 541. *Fleta*, *lib.* 1. *cap.* 15. 4, 5. *Bracton*, *lib.* 1. *c.* 9. 4. *Co. Litt.*

Litt. 244. *a.* *Salk.* 123, 483. 7 *H.* 4. 9. All which caſes were quoted to prove that improbability will baſtardize the iſſue, and therefore it was argued *a fortiori*, that impoſſibility, which was found in this caſe, would baſtardize alſo.

Where an order of baſtardy is made originally at ſeſſions (as it may) & if a ſummons ſhould not be ſet out. 1 Stran. 475. Mich. 8 Geo. 1. Rex v. Cleg.

The order of baſtardy was made at ſeſſions (which was admitted to have original juriſdiction), and Mr. *Denton* objected, that it was not ſaid the defendant was ever ſummoned or appeared, and natural juſtice required that he ſhould at leaſt have an opportunity to defend himſelf. *C. J.* I believe theſe orders made originally at ſeſſions are very rare, the uſual way being to bring the matter before the ſeſſions by way of appeal from the order of two juſtices. Now if it ſhould be taken that the order of two juſtices will be well enough without their ſhewing a ſummons or appearance; yet I think this caſe will fall under a very different conſideration. For in the other caſe the party has an opportunity to relieve himſelf by appeal, whereas upon an original order at ſeſſions he can have no opportunity to bring the matter to a further examination; ſo that it is but a lewd woman's going behind his back and ſwearing a baſtard upon him, by which means the moſt innocent man in the world may be condemned. In the caſe of the *Queen* v. *Simpſon*, it was long debated, whether there ought not to have been a perſonal appearance of the deer-ſtealer; at laſt indeed it was determined, that a ſummons was ſufficient, but it was never offered to be ſupported upon the foot of not ſhewing a ſummons. So far from it, that exceptions were taken to the manner of the ſummons, and the court delivered a ſpecial opinion as to them. *Lord Raym.* 1406. *Eyre* J. *(abſente Powys)*: It not appearing this order was made in the abſence of the party, I think we muſt take it to be a regular proceeding. And ſo it was held in the caſe of the *King* v. *Peckham*, *Carth.* 406. The court ſaid, where a ſummons was neceſſary, they would preſume there was one, unleſs the contrary appeared, for all juriſdictions are preſumed *prima facie* to act according to law. *Forteſcue* J. It is certain that natural juſtice requires that no man ſhall be condemned without notice, for which reaſon I think the order will be good, becauſe it does not appear to us that he had no notice: Are we to ſuppoſe the ſeſſions have proceeded contrary to right and juſtice, and that too in a caſe where they have undoubted juriſdiction? in the caſe of ſervants wages the juriſdiction is given only in huſbandry, and yet orders have been held good, where it did not appear the ſervice was in huſbandry, for the court ſaid they would intend it ſo, unleſs the contrary appeared. *Salk.* 442. *C. J.* I do not ſee to what purpoſe we exerciſe a ſuperintendancy over all inferior juriſdictions, unleſs it be to inſpect their proceedings, and ſee whether they are regular or not. I have often heard it ſaid, that nothing ſhall be preſumed one way or the other in an inferior juriſdiction. And as to the caſe of wages, it was always wondered at, and in my lord *Parker*'s time it was actually contradicted in the caſe of the *King* v. *Helling*, *Adjournatur*. *Trin.* 12 *Geo.* it was moved and confirmed without oppoſition.

Where a woman with child of a baſtard is removed from A to B. and privately returns to A. and is there delivered, the ſettlement of the baſtard is in B. 1 Stran. 476. Mich. 8 Geo. 1 between the pariſhes of Landinahoe and Much Birch.

Order for removal of a female baſtard child from *Landinahoe* to *Much Birch*, wherein the fact is ſtated ſpecially that *Mary Wells* had been lately removed from the pariſh of *Landinahoe* to *Much Birch* aforeſaid, being the place of her legal ſettlement; and that ſoon after, ſhe of her own accord did ſecretly return to the pariſh of *L.* from which ſhe was removed, and has been there ſince delivered of a female baſtard child, which at the time of her removal ſhe went with: And the juſtices ſend the baſtard to *M.* the ſettlement of the mother. Mr. *Fazakerley* moved to quaſh the order, upon the general ground, that a baſtard is ſettled at the place of its birth. Which was oppoſed by *Strange*, who cited *Trin.* 1 *Geo.* between the pariſhes of *Tottenhoe* and *Newton Longville*, where a baſtard born at *A.* pending an illegal order of removal, was ſent back with the mother upon reverſal, and adjudged that the baſtard ſhould follow the ſettlement of the mother. So is *Salk.* 474, 532. 2 *Bulſt.* 349. *Et per curiam*, (abſente *C. J.*) That caſe will govern this, and therefore the order muſt be confirmed.

N. B. This caſe, ſays Sir *John Strange*, was never well conſidered, for it went off without any debate, upon the anſwer given upon the caſes which I cited, and which ſeem to differ widely from the preſent caſe; for thoſe caſes were all adjudged upon the apparent fraud, in illegally removing a woman big with child of a baſtard, and leſt the pariſh ſhould take advantage by their own wrong: but in the preſent caſe, it is ſtated that ſhe returned of her own accord, which makes it no more than the common caſe of a baſtard born in the pariſh of *A.* when the mother is ſettled in another pariſh; which ſettlement of the mother was never thought to be the ſettlement of the baſtard. And I do not ſee that it makes any difference, that ſhe returned to the pariſh from whence ſhe was removed, any more than if ſhe had rambled into any other pariſh.

Baſtard chargeable only where born. 1 Stran. 644. Mich 12 Geo. 1. Rex v. Warne.

Indictment for taking a baſtard child born out of the pariſh of *A.* and bringing it into that pariſh, and there keeping it privately without notice to the churchwardens, and with intent to charge the pariſh. The court quaſhed the indictment, becauſe it appeared, the pariſh could not be burthened, the baſtard being born out of the pariſh of *A.*

The ſex of the baſtard muſt be ſpecified in an order. Where two juſtices have made an order, the ſeſſions have no juriſdiction, but upon appeal. 1 Stran. 503. Hil. 8 Geo. 1. Rex v. England.

Two orders of baſtardy were returned, one made by two juſtices, and another original order made at ſeſſions; and now both were quaſhed. The order of two juſtices, becauſe the ſex of the baſtard, or the name of it, were not mentioned, only a certain baſtard child born of the body of *A*; and the order of ſeſſions, becauſe there being an order of two juſtices before, the ſeſſions had no juriſdiction but upon appeal.

After defendant is diſcharged at ſeſſions, a new order of baſtardy cannot be made. 2 Stra. 716. Mich. 13 Geo. 1. Rex v. Tenant.

Upon an order of baſtardy the defendant appealed to the ſeſſions, where upon a full hearing he was diſcharged: afterwards the ſame juſtices make a new order upon him. And *Lee* moved to quaſh it, the defendant being by the former order of ſeſſions abſolutely diſcharged. 1 *Ven.* 59. *Cro. Car.* 350. And of that opinion was the court, and quaſhed the laſt order.

An

An order of baſtardy was made, to pay ſo much weekly, till the child was nine years old, if it ſhould ſo long live. *Et per cur'*, It is a good order, for we cannot intend it able to provide for itſelf ſooner.

Order to provide for baſtard till nine, good. 2 Stran. 788.

Mich. 1 Geo. 2. Rex v. Street.

Upon an order of baſtardy it was ſtated, that the huſband had been abſent ſix years, and that during his abſence the defendant had had carnal knowledge of the wife, and therefore they adjudged him to be the putative father. *Et per curiam*, That order muſt be quaſhed, for his lying with her is not a ſufficient reaſon to infer him the father of this child: and though the juſtices need not ſhew the grounds they go upon, yet if they do, and it appears no ſufficient ground, their order will be bad.

That the huſband was abſent ſix years, and defendant had knowlege of the wife, no good ground for order of baſtardy. 2 Stran. 811.

Trin. 2 Geo. 2. Rex v. Browne.

Upon an order made thirty years ago, on the pariſh of *Budworth*, for maintenance of a baſtard child born in the townſhip of *Nether Dumply* within that pariſh, which order was now removed before the court by *Certiorari*. It was held, firſt that an order made upon the overſeers of any pariſh by two juſtices, for raiſing a ſum towards the maintenance of a baſtard or poor perſon, does not determine the ſettlement of that perſon in that pariſh, for the right of ſettlement is not conteſted, but preſumed. 2dly, That the clauſe in the ſtatute of the 13 & 14 *Car.* 2. *cap.* 12. which provides, that diſtinct townſhips of large pariſhes in the nothern countries ſhall reſpectively provide for their poor, under the penalty mentioned in the 43 *Eliz. c.* 2. muſt be underſtood with reſpect to the maintenance of poor and impotent perſons, and not with reſpect to baſtards who are provided for by other ſtatutes. But if a baſtard be grown up, and by accident grow impotent, he may be relieved as a poor perſon within that ſtatute.

Order of maintenance does not determine the ſettlement of a baſtard. 1 Salk. 123. Hil. 5 Ann. B. R. between the pariſh of Budworth and townſhip of Dumply in Lanc'.

A. was brought to bed of a female baſtard child in the village of *Church* near *Canterbury*, and charged *Richard Jenkins* with being the father of the child: And now two juſtices of peace made an order, which concluded thus: And on hearing what was alledged by counſel on *both* ſides, we do hereby adjudge that the ſaid *Richard Jenkins is not the reputed father of the ſaid female baſtard child*, born of the body of the ſaid *A.* And we do acquit and diſcharge him of and from the ſame.— This order being removed up here, the only material exception taken to it by *Knowler*, was, that by the concluſion of this order, the juſtices have debarred all other juſtices of peace from the power of re-examining this matter, which theſe two juſtices have no right to do; and therefore prayed it might be quaſhed. It was argued on the other ſide, by *Huſſey and Walker*, that it was as reaſonable the two juſtices have power to acquit, as well as to condemn a man. That the ſeſſions had no original juriſdiction of baſtardy by 18th of *Eliz.* but it was given them by 3 *Car.* 1. by a virtual reference only to 18 *Eliz.* And that it has been held that the ſeſſions has a power, in caſe of baſtardy, to make a final order of diſcharge and acquittal, (*Slater*'s caſe, *Cro. Car.* 470.) and therefore it ſeemed to be a right rule of conſtruction, that the 18 *Eliz.* (which act firſt gave the juſtices *out* of ſeſſions, the examination of baſtardy) ſhould give them as great a power as was given the ſeſſions by 3 *Car.* 1.

Two juſtices, on application to them out of ſeſſions, on hearing all parties, adjudged that A. is not the reputed father of the baſtard, charged upon him by the oath of the woman, but held by the court, that this would not ſcreen A from being charged with an order by other two juſtices. MS. Rep. in B. R. in time of lord Hardwicke.

Eaſt. 9 Geo. 2. Rex v. Jenkins.

ſince that power was allowed not to be given them expreſsly by the act, but by the reference and relation to the 18 *Eliz.*—Or ſuppoſing the two juſtices have no ſuch power, then that the words are to be rejected, as ſurpluſage, or to be interpreted ſo as to come within the power they have: which is to diſcharge him from the proſecution before them. The court conceived a great doubt on it, and ordered it to ſtand for the judgment of the court next term; for *per chief juſtice* (lord *Hardwicke*) it will be very hard on a man, in caſe he is liable to be turned over to the examination of *every* two juſtices in the county. And ſo on the contrary, there may ſome inconveniency ariſe; For in caſe two juſtices of peace can, by their order, diſcharge a man from any further proſecution, either by *other* juſtices, or by the ſeſſions; a man may by colluſion get himſelf carried before any two juſtices who are his friends, and ſo get clear from any future examination. Adjourned till the following term, *viz. Trin.* 10 *Geo.* 2. When the chief juſtice (lord *Hardwicke*) delivered the opinion of the court in this manner: The only queſtion in this caſe is, whether the juſtices of peace *out* of ſeſſions can make any *final* order of acquittal, or conviction, in the caſe of baſtardy; and we are all of opinion that they cannot make ſuch an order. The ſtat. 18 *Eliz. c.* 3. is the only ſtat. on which the two juſtices of peace found their power, in relation to baſtard children. The words of which act are upon *examination of the cauſe and circumſtances, they ſhall and may, by their direction, take, order, &c.* Now the power given them by this act, is not a power to proceed, either to convict or to acquit the party, but by way of order (as there are many other ſtatutes impowering two juſtices of the peace, to act in the like manner); wherefore the words of the act are, *they ſhall take order &c. as well*, &c. And as a conſequence of theſe words, this act has been conſtrued only to give them a power and authority to proceed only by way of order, and not of acquittal or conviction; which appears to be ſo from hence, that thoſe orders have been returned up here in *Engliſh*, and not in *Latin*, which was always neceſſary to be done on convictions before the ſtatute which required all proceedings to be in *Engliſh*; ſo neither is the evidence ſet out on them; nor is it neceſſary to ſet forth in them that the party was ſummoned; both which are neceſſary in convictions. But theſe orders have always been held to be good, if it follows only the words of the ſtat. *viz.* That *upon examination of the cauſe and circumſtances*, they order ſo and ſo; which would certainly be wrong in a conviction: the queſtion then is, what words there are in this ſtatute to make this order, it being neither for the puniſhment of the party, nor for the relief of the pariſh. If this had been an order made at the ſeſſions, as it might have been by 3 *Car. c.* 4. *ſect.* 15. Then I allow the juſtices might have made ſuch an order of diſcharge. And it was ſaid that, by the ſame parity of reaſon, two juſtices might make ſuch order, the ſtat. 3 *Car.* 1. having words of reference to ſtat. 18 *Eliz.* this objection at firſt had ſome weight with me: But on conſidering the following caſes I think that way of arguing is not concluſive, *viz. Cro. Car.* 407, 341, 350, 1. *M.* 13 *G.* 1. *Rex & Tenant*, which was this: Two juſtices made an order to charge the defendant with the maintainance of a baſtard child, who appealed to the

eſſions, who diſcharged the original order. Then two juſtices make another order to charge him; and that laſt order being removed up here, was held to be void, and was quaſhed: and the reaſon was, becauſe the ſeſſions had an abſolute power, *finally* to charge or acquit him. Now, in theſe 3 caſes, the order appeared to be made by the ſeſſions, who are the dernier reſort in thoſe inſtances. And therefore their determinations could not be examined over again, not even by themſelves, much leſs by two juſtices of the peace; and it would be abſurd to maintain that it could; becauſe then this ſecond order made by two juſtices might be again examined by the ſeſſions, ſo that there would be no end of it. If we ſhould determine that the two juſtices had ſuch a power of giving a final diſcharge to the party, we ſhould make a very unequal conſtruction of the act; for in caſe the two juſtices ſhould make ſuch an order, the pariſh cannot appeal, (For ſtrictly ſpeaking, no appeal is given to the ſeſſions, by either party, but conſequentially only on the behalf of the perſon charged, upon the account of his being bound over to appear at the next general quarter-ſeſſions, which gives the ſeſſions a power of re-examining the caſe); ſo that I ſay, in that caſe, the pariſh cannot appeal, though the party, in caſe of his being charged, would have that privilege. So that if at any time the perſon could get any two juſtices of peace, to make an order of diſcharge, the pariſh could have no relief.—It was objected, that if the two juſtices had not ſuch a power, there would be a great inconveniency attending the party accuſed, being liable to be carried round to every two juſtices in the county. If this is an inconvenience, ſo is there likewiſe an inconvenience attending the other conſtruction, as I have ſhewn; and when one inconvenience meets another, the law muſt take place. But this is not a greater inconvenience than what attends any other caſe, as that of applications for removals, and the like; where, if one ſet of juſtices will not do it, another may. But in all theſe caſes, if there ſhould be any abuſes committed, by hurrying the parties unreaſonably from one ſet of juſtices to another, the parties may have the ſame remedy, as in all other caſes, where the proceedings of law are abuſed. Therefore upon the whole, we are all of opinion, that the order ought to be quaſhed.

Upon motion to quaſh an order of baſtardy, the reputed father muſt be preſent in court. 2 Salk. 475. Hil. 8 Wil. 3. Rex v. Mathews.

Mr. *Montague* moved to quaſh an order for maintaining a baſtard child: firſt, becauſe it was not ſaid the child was likely to become chargeable: and 2dly, the defendant was ordered to pay 18*d. per* week *indefinitely*, without limiting any certain time: *Shower* anſwered, that no order relating to a baſtard child can be quaſhed, except the reputed father be preſent in court, *quod curia conceſſit*; however this being a hard caſe, a rule was made to ſhew cauſe; and being ſtirred again the next term, the court would not quaſh it, till the reputed father came into court, and the firſt exception was over-ruled; for it is ſelf-evident that every baſtard child is likely to become chargeable.

Order of baſtardy ill, becauſe examination by one juſtice only. 2 Salk. 478. Hil. 8 Will 3: Rex v. Beard.

An order made by two juſtices of the peace in *Suſſex*, adjudged *Beard* to be the father of a baſtard child, which was quaſhed, becauſe it appeared thereby, that the examination of the woman was by *one* juſtice only, tho' the ordering part thereof was ſaid to be made by both; and *Beard* was bound over to the next ſeſſions.

The

Money for maintenance of a baſtard may be ordered to be paid to the overſeers. 1 Salk. 122. Trin. 4 Ann. B. R. Regina v. Weſton.

The defendant being adjudged the father of a baſtard by two juſtices, exception was taken to the order: 1ſt, That he was ordered to pay ſo much weekly to the overſeers of the pariſh; *ſed non alloc'*. For, as before the inſtitution of overſeers, the juſtices might in theſe caſes order the money to be paid to two or three of the inhabitants, ſo now they may to the overſeers. The ſecond exception was, that it was ſaid, We the ſaid two juſtices *doth adjudge*, *&c.* which is the ſingular, inſtead of *do*, and 1 *Cro.* 489. was cited to make this good. That was an indictment on 3 *H.* 7. *c.* 2. againſt *Fulwood* and others, *quod ipſi cepit* for *ceperunt*; but the roll of that caſe being ſearched, which is in *Hill.* 13 *Car.* 1. *rot.* 24. *inter placita coron.* the indictment was *ceperunt*, and not *cepit*; wherefore this order was quaſhed. *Note*, this cauſe came into court *Paſc.* 4 *Ann.* by *habeas corpus*, and the caſe was, that *Weſton* had appealed to the ſeſſions where the order was confirmed, and he committed for not paying the money ordered; and Mr. *King* took this exception to the return of the *habeas corpus*, *viz.* That the ſeſſions ſhould have proceeded againſt him upon his recognizance. *Et per Holt* C. J. If they proceed on the 18 *Eliz.* the ſeſſions has no power to commit, but to proceed on his recognizance: but if on the 3 *Car.* 1. the ſeſſions may commit as the two juſtices might have done; that is, unleſs the party put in ſecurity to perform the order, or to appear at the next ſeſſions.

Order quaſhed becauſe the words of adjudication were in the ſingular number inſtead of the plural.

By 18 Eliz. c. 3. ſeſſions muſt proceed on recognizance. By 3 Car. 1. may commit.

If a man is adjudged by two juſtices the reputed father of a baſtard, and ordered to pay, and on appeal the order is confirmed, the juſtices at the ſeſſions cannot commit for non payment, but muſt proceed on the recognizance taken by the two juſtices. Lord Raym. 1157.

The defendant was adjudged by two juſtices to be the reputed father of a baſtard child, purſuant to the ſtatute of 18 *Eliz.* and ordered to pay, *&c.* and upon appeal to the ſeſſions in *Hertfordſhire* the order was confirmed, and for not paying the money ordered, the defendant was committed, and was now brought into court upon a *habeas corpus*; and ſeveral exceptions were taken to the order of the two juſtices, and after they had been ſeveral times ſtirred, Mr. *King* took an exception to the return of the *habeas corpus*, that this was not a ſufficient cauſe of commitment, but that in caſe of refuſal to obey the order, the juſtices ought to have proceeded againſt the defendant upon his recognizance; which is the method preſcribed by the ſtatute, the words of which are, "That every perſon making default in not performing the order of the two juſtices, ſhall be committed to ward in the common gaol, there to remain without bail or mainprize, except they ſhall put in ſufficient ſecurity to perform the ſaid order, or elſe perſonally to appear at the next general ſeſſions of the peace to be holden in that county where ſuch order ſhall be taken; and alſo to abide ſuch order, as the ſaid juſtices of the peace, or the major part of them, then and there ſhall take in that behalf (if they then and there ſhall take any); and that if at the ſaid ſeſſions the ſaid juſtices ſhall take no other order, then to abide the order before made." So that the two juſtices only have the power to commit, if the party refuſe to give ſecurity; but the ſeſſions have no power to commit: but in caſe the perſon will not perform their order, they muſt go againſt his ſecurity. And for this reaſon in the like caſe between the King and *Hammond*, 2 *Bulſtr.* 341. where the defendant was committed at the ſeſſions, after a bond given to the two juſtices purſuant to the ſtatute, he was diſcharged.

Holt

Holt chief juſtice: Where the ſeſſions proceed by way of appeal, it is by virtue of the power given them by the 18 *Eliz.* and by that ſtatute they have no power to commit, but the proviſion that is made by that ſtatute, to compel the party's obedience to their orders, is by a recognizance, which is to be taken by the two juſtices that made the order; and if the party will not give ſuch a recognizance, they have power to commit him. Indeed if the ſeſſions proceed originally by 3 *Car.* 1. they may commit for not performing their order. And he ſaid, it was not material in this caſe, whether the two juſtices had taken any recognizance of *Weſt* or no (which Mr. *Eyre* objected did not appear to have been done, and ſo would diſtinguiſh this from *Hammond*'s caſe); for if they had not done it, it was a neglect in them; but the ſeſſions would not thereby have a power to commit, when no ſuch power is given them by the ſtatute.

Original proceedings at ſeſſions.

Powell juſtice: The two juſtices power to commit is only conditional, except the party put in ſufficient ſecurity, *&c.* as by the act.

Upon this exception the defendant was diſcharged; and as to the order, *curia adviſare* till next term, and *Weſt* was bound by recognizance to appear in the *King's Bench* the firſt day of next term.

Several orders made by the juſtices of peace in *Wilts*, againſt the defendant, for being the putative father of a baſtard child, were removed into the *King's Bench* by *certiorari*. And Mr. *Broderick* moved, to quaſh one of them, which was made by the juſtices, that the churchwardens and overſeers of the poor ſhould ſeize of the defendant's goods, what they ſhould judge proper, to ſecure the pariſh from the maintenance of the child; becauſe by the 13 & 14 *Car.* 2. *cap.* 12. (See *page* 322.) they have only authority, to make an order to impower the churchwardens and overſeers, *&c.* to ſeize, what the juſtices ſhould judge proper, and not what the churchwardens, *&c.* ſhould judge proper. And for this reaſon it was quaſhed. Then an exception was taken to the original order, becauſe it ordered, that the defendant ſhould give ſecurity for payment of the ſum by them impoſed for the maintenance of the child, when it did appear, that the defendant had diſobeyed the order in point of payment. And by 18 *El. cap.* 3. an order for ſecurity cannot be made, till after contempt. And for this reaſon the order was quaſhed as to that part, and was confirmed as to the reſidue. And *per curiam*, When an order is confirmed in this court, an attachment lies for non-performance of it; and therefore this court will not take ſecurity of the party for performance of it. But if the original order had been at the ſeſſions, not removed hither, the court would have taken ſecurity of him, to appear there.

Order to ſeize goods of the reputed father of a baſtard, *&c.* Lord Raym. 858. Eaſt. 2 Ann. Regina v. Chaffey.

Order cannot be made for ſecurity till after contempt.

See ſtat. 21 *Jac.* 1. *c.* 27. in page 321. In the conſtruction of which ſtatute it hath been adjudged, that in order to convict a woman by force of this ſtatute, there is no need that the indictment be drawn ſpecially, or conclude *againſt the form of the ſtatute*; but that it is the better way to ſet forth only that the defendant, *brought forth a living male child, which male child being then and there living was by the law of* England *born a baſtard*, and then to go on in the ordinary way to ſhew that ſhe murdered him, *&c. againſt the peace*, &c. for the ſtatute doth not make a *new* offence, but only

Concealing the death of a baſtard child.

only makes ſuch concealment an undeniable evidence of murder. Alſo it hath been agreed, that where a woman appears to have endeavoured to conceal the death of ſuch child within the ſtatute, there is no need of any proof that the child was born alive, or that there were any ſigns of hurt upon the body, but it ſhall be undeniably taken that the child was born alive and murdered by the mother. But it hath been adjudged, that where a woman lay in a chamber by herſelf, and went to bed without pain, and waked in the night, and knocked for help, but could get none, and was delivered of a child and put it in a trunk, and did not diſcover it till the following night, yet ſhe was not within the ſtatute, becauſe ſhe knocked for help. Alſo it hath been agreed, that if a woman confeſs herſelf with child before-hand, and afterwards be ſurpriſed and delivered, nobody being with her, ſhe is not within the ſtatute, becauſe there was no intent of concealment. And therefore in ſuch caſes it muſt appear by ſigns of hurt upon the body, or ſome other way, that the child was born alive. 2 *Hawk. P. C.* 438. cites *Kely.* 32, 33.

Giving a potion to cauſe abortion.

If a woman be with child, and any gives her a potion to deſtroy the child within her, and ſhe take it, and it works ſo ſtrongly that it kills her, this is murder; for it was not given to cure her of a diſeaſe, but unlawfully to deſtroy her child within her; and therefore he that gives her a potion to this end, muſt take the hazard, and if it kills the mother, it is murder, and ſo ruled before me, ſays lord *Hale*, at the aſſizes at *Bury* in the year 1670. 1 *Hale's H. P. C.* 429, 430.

If a woman be quick or great with child, if ſhe take, or another give her any potion to make an abortion, or if a man ſtrike her, whereby the child within her is killed, it is not murder nor manſlaughter by the law of *England*, becauſe it is not yet *in rerum natura*, tho' it be a great crime, and by the judicial law of *Moſes* (*Exod.* xxi. 22.) was puniſhable with death; nor can it legally be known, whether it were killed or not, 22 *E.* 3. *Coron.* 263. So it is, if after ſuch child were born alive, and baptized, and after die of the ſtroke given to the mother, this is not homicide. 1 *Hale's H. P. C.* 433. cites 1 *E.* 3. 23. *b. Coron.* 146.

But if a man procure a woman with child to deſtroy her infant, when born, and the child is born, and the woman in purſuance of that procurement kill the infant, this is murder in the mother, and the procurer, is acceſſary to murder, if abſent, and this whether the child were baptized or not. 1 *Hale's H. P. C.* 433. cites 7 *Co. Rep.* 9. *Dyer* 186.

For the ſettlements of baſtard children, ſee Poor.

Bent.

STAT. 15 *Geo.* 2. *c.* 33. [*A. D.* 1742.] *made, among other purpoſes,* " for the more effectual preventing the cutting of ſtarr or bent."

Sect. 6. " And whereas upon the north-weſt coaſts of this kingdom, and eſpecially in the county palatine of *Lancaſter*, the ſea is bounded, and the adjacent lands are prevented from being overflowed by large ſand-hills, which are compoſed of ſuch looſe ſand, that in dry weather, when any violent ſtrong weſt winds happen to blow, the ſame is carried away, and thrown upon the adjacent lands, not only to the damage thereof, but alſo to the great terror and danger of the inhabitants, who are thereby expoſed to the inundation of the ſea: And whereas it has been found by experience, that the beſt way to prevent the ſaid hills from being blown away as aforeſaid, is to plant them with a certain ruſh or ſhrub called ſtarr or bent, which proves an effectual method for keeping the ſame firm and ſolid, and which the owners of the ſaid lands are at great coſts and charges in yearly ſetting and planting for that purpoſe: And whereas it frequently happens, that many idle and diſorderly perſons, reſiding near the ſaid coaſts, do unlawfully and maliciouſly in the night-time, as well as by day, cut, pull up, and carry away the ſtarr or bent ſo planted as aforeſaid, and inſtead of working in an honeſt manner for the maintenance and ſupport of their families, do privately ſell and diſpoſe of the ſaid ſtarr or bent, for making of matts, bruſhes, and brooms or beſoms, and thereby the ſaid hills are rendred ſo looſe and open, that the ſame are often blown upon the adjacent lands, which are covered over therewith in ſuch manner as to deſtroy the corn, graſs and herbage thereof, and expoſe the ſame to inundations, to the great loſs and damage of the owners and occupiers of the ſaid lands: For remedy whereof, be it enacted by the authority aforeſaid, That if any perſon or perſons ſhall, at any time or times, from and after the twenty-ninth day of *September* one thouſand ſeven hundred and forty-two, by day or night, without the conſent of the lord or owner of ſuch ſtarr or bent hills, cut, pull up or carry away any ſtarr or bent which already is, or at any time or times hereafter ſhall be planted or ſet on the ſaid hills or banks, on the north-weſt coaſts of *England*, in order to preſerve and to prevent the ſame from being blown upon the ſaid adjacent lands, it ſhall and may be lawful to and for any one or more of his majeſty's juſtices of the peace of the county, riding, city, town corporate, liberty or diviſion, where ſuch ſtarr or bent ſhall be cut, pulled up or carried away, and ſuch juſtice or juſtices is and are hereby impowered, upon complaint or information upon oath made of ſuch offence (which oath ſuch juſtice or juſtices is and are hereby authorized to adminiſter), to ſummon the party or parties ſo complained of, and in default of appearance thereon, to iſſue out his or their warrant or warrants to apprehend and bring before him or them the perſon or perſons ſo accuſed or com-

plained of; and upon proof thereof made, either by confeſſion of the party or parties ſo accuſed, or upon the oath of one or more credible witneſs or witneſſes, to convict the offender or offenders; and every perſon ſo offending, and being thereof convicted as aforeſaid, ſhall forfeit and pay the ſum of twenty ſhillings; one moiety thereof to the informer, and the other moiety to the lord or owner of ſuch ſtarr, bent, or ſand-hills, the ſame to be levied by diſtreſs and ſale of the offender's goods and chattels, by warrant under the hands and ſeals of ſuch juſtice or juſtices, together with the charges of ſuch diſtreſs and ſale, rendring the overplus, if any be, to the owner or owners thereof; and for want of ſufficient diſtreſs, the ſaid juſtice or juſtices are hereby required to commit the perſon or perſons ſo convicted as aforeſaid, to the houſe of correction, there to remain and be kept to hard labour for the ſpace of three months; and if any perſon or perſons ſo convicted, ſhall afterwards be guilty of a ſecond offence, and thereof lawfully convicted by ſuch juſtice or juſtices, either by confeſſion of the party or parties, or upon the oath of one or more credible witneſs or witneſſes, ſuch perſon or perſons ſhall be committed to the houſe of correction for the ſpace of one year, there to be whipt and kept to hard labour.

Penalty for cutting ſtarr or bent from the ſand-hills.

Penalty on ſecond offence.

Penalty on having ſtarr or bent in cuſtody.

Sect. 7. "And be it further enacted by the authority aforeſaid, That if any ſtarr or bent ſhall be found in the cuſtody or poſſeſſion of any perſon or perſons within five miles of any ſuch ſtarr, bent or ſand-hills as aforeſaid, ſuch perſon or perſons being convicted thereof before one or more ſuch juſtice or juſtices in manner aforeſaid, ſhall be deemed, adjudged and taken to be the cutter and puller of ſuch ſtarr or bent from ſuch ſand-hills, and ſhall forfeit and pay the ſum of twenty ſhillings; one moiety thereof to the lord or owner of ſuch ſtarr, bent or ſand-hills, the ſame to be levied in manner aforeſaid, by diſtreſs and ſale of the offender's goods and chattels, together with the charges of ſuch diſtreſs and ſale, rendring the overplus, if any, to the owner or owners thereof; and for want of ſufficient diſtreſs, ſuch perſon or perſons ſhall be committed, in manner aforeſaid, to the houſe of correction, there to remain, and be kept to hard labour for the ſpace of three months.

Proviſo.

Sect. 8. "Provided always, That nothing in this act contained ſhall extend, or be conſtrued to extend, to prohibit or reſtrain any perſon or perſons from the exerciſe or enjoyment of any ancient preſcriptive right, to cut ſtarr or bent upon the ſea coaſts in the county of *Cumberland*."

Black-Act.

STAT. 9 *Geo.* 1. *c.* 22. [*A. D.* 1722. *intituled*] "An act for the more effectual puniſhing wicked and evil-diſpoſed perſons going armed in diſguiſe, and doing injuries and violences to the perſons and properties of his majeſty's ſubjects, and for the more ſpeedy bringing the offenders to juſtice."

Sect. 1. "Whereas ſeveral ill-deſigning and diſorderly perſons have of late aſſociated themſelves under the name of *Blacks*, and entred into confederacies to ſupport and aſſiſt one another in ſtealing and deſtroying of deer, robbing of warrens and fiſh-ponds, cutting down plantations of trees, and other illegal practices, and have, in great numbers, armed with ſwords, fire-arms, and other offenſive weapons, ſeveral of them with their faces blacked, or in diſguiſed habits, unlawfully hunted in foreſts belonging to his majeſty, and in the parks of divers of his majeſty's ſubjects, and deſtroyed, killed, and carried away the deer, robbed warrens, rivers, and fiſh-ponds, and cut down plantations of trees; and have likewiſe ſolicited ſeveral of his majeſty's ſubjects, with promiſes of money, or other rewards, to join with them, and have ſent letters, in fictitious names, to ſeveral perſons, demanding veniſon, and money, and threatning ſome great violence, if ſuch their unlawful demands ſhould be refuſed, or if they ſhould be interrupted in, or proſecuted for ſuch their wicked practices, and have actually done great damage to ſeveral perſons, who have either refuſed to comply with ſuch demands, or have endeavoured to bring them to juſtice, to the great terror of his majeſty's peaceable ſubjects: For the preventing which wicked and unlawful practices, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons, from and after the firſt day of *June* in the year of our lord one thouſand ſeven hundred and twenty-three, being armed with ſwords, fire-arms, or other offenſive weapons, and having his or their faces blacked, or being otherwiſe diſguiſed, ſhall appear in any foreſt, chaſe, park, paddock, or grounds incloſed with any wall, pale, or other fence, wherein any deer have been or ſhall be uſually kept, or in any warren or place where hares or conies have been or ſhall be uſually kept, or in any high road, open heath, common, or down; or ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, or unlawfully rob any warren or place where conies or hares are uſually kept; or ſhall unlawfully ſteal or take away any fiſh out of any river or pond; or if any perſon or perſons, from and after the ſaid firſt day of *June*, ſhall unlawfully and wilfully hunt, wound, kill, deſtroy, or ſteal any red or fallow deer, fed or kept in any places in any of his majeſty's foreſts or chaſes, which are or ſhall be incloſed with pales, rails, or other fences, or in any park, paddock,

Continued by 12 Geo. 1. c. 30. &c. explained and amended by 27 Geo. 2. c. 15. and made perpetual by 31 G. 2. c. 42. (Offences againſt this act are excepted out of the general pardon, 20 Geo. 2. c. 52.)

Perſons diſguiſed and in arms appearing in foreſt, &c. and killing deer, &c. deemed felons.

paddock, or grounds incloſed, where deer have been or ſhall be uſually kept; or ſhall unlawfully and maliciouſly break down the head or mound of any fiſh-pond, whereby the fiſh ſhall be loſt or deſtroyed; or ſhall unlawfully and maliciouſly kill, maim, or wound any cattle, or cut down or otherwiſe deſtroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, ſhelter, or profit; or ſhall ſet fire to any houſe, barn, or out-houſe, or to any hovel, cock, mow, or ſtack of corn, ſtraw, hay, or wood; or ſhall wilfully and maliciouſly ſhoot at any perſon in any dwelling-houſe, or other place; or ſhall knowingly ſend any letter, without any name ſubſcribed thereto, or ſigned with a fictitious name, demanding money, veniſon, or other valuable thing; or ſhall forcibly reſcue any perſon, being lawfully in cuſtody of any officer or other perſon, for any of the offences before mentioned; or if any perſon or perſons ſhall, by gift or promiſe of money, or other reward, procure any of his majeſty's ſubjects to join him or them in any ſuch unlawful act; every perſon ſo offending, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony, without benefit of clergy.

Sending letters without a name, &c. and demanding money, &c. felony.

Sect. 2. "And whereas, notwithſtanding the laws now in force againſt the illegal practices above mentioned, and his majeſty's royal proclamation of the ſecond day of *February*, which was in the year of our lord one thouſand ſeven hundred and twenty-two, notifying the ſame, many wicked and evil-diſpoſed perſons have, in open defiance thereof, been guilty of ſeveral of the offences before mentioned, to the great diſturbance of the publick peace, and damage of divers of his majeſty's good ſubjects; It is hereby enacted by the authority aforeſaid, That all and every perſon and perſons, who, ſince the ſecond day of *February* in the year of our lord one thouſand ſeven hundred and twenty-two, have committed or been guilty of any of the offences aforeſaid, who ſhall not ſurrender him, her, or themſelves, before the twenty-fourth day of *July* in the year of our lord one thouſand ſeven hundred and twenty-three, to any of the juſtices of his majeſty's court of *King's Bench*, or to any one of his majeſty's juſtices of the peace, in and for the county where he, ſhe, or they did commit ſuch offence or offences, and voluntarily make a full confeſſion thereof to ſuch juſtice, and a true diſcovery upon his, her, or their oath or oaths, of the perſons who were his, her, or their accomplices in any of the ſaid offences, by giving a true account of their names, occupations, and places of abode, and to the beſt of his, her, or their knowledge or belief, diſcover where they may be found, in order to be brought to juſtice, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony, without benefit of clergy.

Such perſons when to ſurrender themſelves, &c.

Sect. 3. Provided nevertheleſs, that all and every perſon and perſons, who have been guilty of any the offences aforeſaid, and ſhall not be in lawful cuſtody for ſuch offence on the ſaid firſt day of *June*, and ſhall ſurrender him, her, or themſelves, on or before the ſaid twenty-fourth day of *July*, as aforeſaid, and ſhall make ſuch confeſſion and diſcovery, as aforeſaid, ſhall by virtue of this be pardoned, acquitted, and diſcharged

Who intitled to a pardon.

of, and from the offences ſo by him, her, or them confeſſed, as aforeſaid; any thing therein contained to the contrary in any wiſe notwithſtanding.

Sect. 4. And for the more eaſy and ſpeedy bringing the offenders againſt this act to juſtice, be it enacted by the authority aforeſaid, That if any perſon or perſons ſhall be charged with being guilty of any of the offences aforeſaid, before any two or more of his majeſty's juſtices of the peace of the county where ſuch offence or offences were or ſhall be committed, by information of one or more credible perſon or perſons upon oath by him or them to be ſubſcribed, ſuch juſtices before whom ſuch information ſhall be made, as aforeſaid, ſhall forthwith certify under their hands and ſeals, and return ſuch information to one of the principal ſecretaries of ſtate of his majeſty, his heirs or ſucceſſors, who is hereby required to lay the ſame, as ſoon as conveniently may be, before his majeſty, his heirs or ſucceſſors, in his or their privy council; whereupon it ſhall and may be lawful for his majeſty, his heirs, or ſucceſſors, to make his or their order in his or their ſaid privy council, thereby requiring and commanding ſuch offender or offenders to ſurrender him or themſelves, within the ſpace of forty days, to any of his majeſty's juſtices of the court of *King's Bench*, or to any one of his majeſty's juſtices of the peace, to the end that he or they may be forthcoming, to anſwer the offence or offences wherewith he or they ſhall ſo ſtand charged, according to due courſe of law; which order ſhall be printed and publiſhed in the *London Gazette*, and ſhall be forthwith tranſmitted to the ſheriff of the county where the offence ſhall be committed, and ſhall, within ſix days after the receipt thereof, be proclaimed by him, or his officers between the hours of ten in the morning, and two in the afternoon, in the market-places, upon the reſpective market-days, of two market-towns in the ſame county, near the place where ſuch offence ſhall have been committed; and a true copy of ſuch order ſhall be affixed upon ſome publick place in ſuch market-towns; and in caſe ſuch offender or offenders ſhall not ſurrender him or themſelves, purſuant to ſuch order of his majeſty, his heirs or ſucceſſors, to be made in council, as aforeſaid, he or they, ſo neglecting or refuſing to ſurrender him or themſelves, as aforeſaid, ſhall, from the day appointed for his or their ſurrender, as aforeſaid, be adjudged, deemed, and taken to be convicted and attainted of felony, and ſhall ſuffer pains of death as in caſe of a perſon convicted and attainted by verdict and judgment of felony, without benefit of clergy; and that it ſhall be lawful to and for the court of *King's Bench*, or the juſtices of *Oyer* and *Terminer*, or general gaol delivery for the county, where the offence is ſworn in ſuch information to have been committed, upon producing to them ſuch order in council, under the ſeal of the ſaid council, to award execution againſt ſuch offender and offenders, in ſuch manner, as if he or they had been convicted and attainted in the ſaid court of *King's Bench*, or before ſuch juſtices of *Oyer* and *Terminer*, or general gaol delivery reſpectively.

Juſtices to return informations to a ſecretary of ſtate, who is to lay the ſame before the king and council, who may make an order for their ſurrender.

Perſons not ſurrendring themſelves purſuant to ſuch order, are deemed to be convicted, &c.

Sect. 5. And be it enacted by the authority aforeſaid, That all and every perſon and perſons, who ſhall, after the time appointed, as aforeſaid, for the ſurrender of any perſon or perſons, ſo charged upon oath with any

Perſons aiding them, &c. deemed felons.

the

the offences aforeſaid, be expired, conceal, aid, abet or ſuccour ſuch perſon or perſons, knowing him or them to have been ſo charged, as aforeſaid, and to have been required to ſurrender him or themſelves, by ſuch order or orders, as aforeſaid, being lawfully convicted thereof, ſhall be guilty of felony, and ſhall ſuffer death as in caſes of felony, without benefit of clergy.

Sect. 6. Provided nevertheleſs, and it is hereby declared and enacted, That nothing herein contained ſhall be conſtrued to prevent or hinder any judge, juſtice of the peace, magiſtrate, officer, or miniſter of juſtice whatſoever, from taking, apprehending, and ſecuring, ſuch offender or offenders, againſt whom ſuch information ſhall be given, and for requiring whoſe ſurrender, ſuch order in council ſhall be made, as aforeſaid, by the ordinary courſe of law; and in caſe ſuch offender or offenders, againſt whom ſuch information, and for requiring whoſe ſurrender, ſuch order in council ſhall be made, as aforeſaid, ſhall be taken and ſecured, in order to be brought to juſtice before the time ſhall be expired, within which he or they ſhall be required to ſurrender him or themſelves, by ſuch order in council, as aforeſaid, that then in ſuch caſe no further proceedings ſhall be had upon ſuch order made in council againſt him or them ſo taken and ſecured, as aforeſaid, but he or they ſhall be brought to trial by the due courſe of law; any thing herein before contained to the contrary in any wiſe notwithſtanding.

Offenders apprehended within the time limited by order of council, ſhall be tried according to law.

Sect. 7. And be it enacted by the authority aforeſaid, That from and after the firſt day of *June* one thouſand ſeven hundred and twenty-three, the inhabitants of every hundred within that part of the kingdom of *Great Britain* called *England*, ſhall make full ſatisfaction and amends to all and every the perſon and perſons, their executors and adminiſtrators, for the damages they ſhall have ſuſtained or ſuffered by the killing or maiming of any cattle, cutting down or deſtroying any trees, or ſetting fire to any houſe, barn, or out-houſe, hovel, cock, mow, or ſtack of corn, ſtraw, hay, or wood, which ſhall be committed or done by any offender or offenders againſt this act; and that every perſon and perſons, who ſhall ſuſtain damages by any of the offences laſt mentioned, ſhall be and are hereby enabled to ſue for and recover ſuch his or their damages, the ſum to be recovered not exceeding the ſum of two hundred pounds, againſt the inhabitants of the ſaid hundred, who by this act ſhall be made liable to anſwer all or any part thereof; and that if ſuch perſon or perſons ſhall recover in ſuch action, and ſue execution againſt any of the ſaid inhabitants, all other the inhabitants of the hundred, who by this act ſhall be made liable to all or any part of the ſaid damage, ſhall be rateably and proportionably taxed, for and towards an equal contribution for the relief of ſuch inhabitant, againſt whom ſuch execution ſhall be had and levied; which tax ſhall be made, levied, and raiſed, by ſuch ways and means, and in ſuch manner and form, as is preſcribed and mentioned for the levying and raiſing damages recovered againſt inhabitants of hundreds in caſes of robberies, in and by an act, [intituled, An act for the following hue and cry] made in the twenty-ſeventh year of the reign of queen *Elizabeth*.

Hundred chargeable for damage ſuſtained in maiming cattle, *&c.*

27 Eliz. c. 13.

Sect.

Sect. 8. Provided nevertheleſs, That no perſon or perſons ſhall be enabled to recover any damages by virtue of this act, unleſs he or they, by themſelves, or by their ſervants, within two days after ſuch damage or injury done him or them by any ſuch offender or offenders, as aforeſaid, ſhall give notice of ſuch offence done and committed unto ſome of the inhabitants of ſome town, village, or hamlet, near unto the place where any ſuch fact ſhall be committed, and ſhall, within four days after ſuch notice, give in his, her, or their examination upon oath, or the examination upon oath of his, her, or their ſervant or ſervants, that had the care of his or their houſes, out-houſes, corn, hay, ſtraw, or wood, before any juſtice of the peace of the county, liberty, or diviſion, where ſuch fact ſhall be committed, inhabiting within the ſaid hundred where the ſaid fact ſhall happen to be committed, or near unto the ſame, whether he or they do know the perſon or perſons, that committed ſuch fact, or any of them; and if upon ſuch examination it be confeſſed, that he or they do know the perſon or perſons, that committed the ſaid fact, or any of them, that then he or they ſo confeſſing, ſhall be bound by recognizance to proſecute ſuch offender or offenders by indictment, or otherwiſe, according to the laws of this realm.

Perſons injured to give notice within two days after the offence committed,

and to be examined within four days after notice, touching their knowledge of the offenders.

Sect. 9. Provided alſo, and be it further enacted by the authority aforeſaid, That where any offence ſhall be committed againſt this act, and any one of the ſaid offenders ſhall be apprehended, and lawfully convicted of ſuch offence, within the ſpace of ſix months after ſuch offence committed, no hundred, or any inhabitants thereof, ſhall in any wiſe be ſubject or liable to make any ſatisfaction to the party injured, for the damages he ſhall have ſuſtained; any thing in this act to the contrary notwithſtanding.

Hundred not liable, if the offender is convicted within ſix months, &c.

Sect. 10. Provided alſo, That no perſon, who ſhall ſuſtain any damage by reaſon of any offence to be committed by any offender contrary to this act, ſhall be hereby enabled to ſue, or bring any action againſt any inhabitants of any hundred, where ſuch offence ſhall be committed, except the party or parties ſuſtaining ſuch damage, ſhall commence his or their action or ſuit within one year next after ſuch offence ſhall be committed.

Action to be commenced within a year after the offence.

Sect. 11. And for the better and more effectual diſcovery of the offenders above-mentioned, and bringing them to juſtice, Be it enacted by the authority aforeſaid, That it ſhall and may be lawful to and for any juſtice of the peace, to iſſue his warrant to any conſtable, headborough, or other peace-officer, thereby authorizing ſuch conſtable, headborough, or other peace-officer, to enter into any houſe, in order to ſearch for veniſon, ſtolen or unlawfully taken, contrary to the ſeveral ſtatutes againſt deer-ſtealers, in ſuch manner, as by the laws of this realm ſuch juſtice of the peace may iſſue his warrant to ſearch for ſtolen goods.

Juſtices may iſſue warrants to ſearch for ſtolen veniſon.

Sect. 12. And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall apprehend, or cauſe to be convicted, any of the offenders above-mentioned, and ſhall be killed or wounded, ſo as to loſe an eye, or the uſe of any limb, in apprehending or ſecuring, or endeavouring to apprehend or ſecure any of the offenders above-mentioned, upon proof thereof made at the general quarter-ſeſſions of the peace for the county, liberty, diviſion or place, where the offence was or ſhall be committed, or the party killed, or receive ſuch wound, by the perſon or

Perſons killed or wounded in apprehending offenders, how to be rewarded.

perſons ſo apprehending, and cauſing the ſaid offender to be convicted, or the perſon or perſons ſo wounded, or the executors or adminiſtrators of the party killed, the juſtices of the ſaid ſeſſions ſhall give a certificate thereof to ſuch perſon or perſons ſo wounded, or to the executors or adminiſtrators of the perſon or perſons ſo killed, by which he or they ſhall be entitled to receive of the ſheriff of the ſaid county the ſum of fifty pounds, to be allowed the ſaid ſheriff in paſſing his accounts in the Exchequer, which ſum of fifty pounds the ſaid ſheriff is hereby required to pay within thirty days from the day on which the ſaid certificate ſhall be produced and ſhewn to him, under the penalty of forfeiting the ſum of ten pounds to the ſaid perſon or perſons to whom ſuch certificate is given; for which ſaid ſum of ten pounds, as well as the ſaid ſum of fifty pounds, ſuch perſon may and is hereby authorized to bring an action upon the caſe againſt ſuch ſheriff, as for money had and received to his or their uſe.

Sect. 13. And whereas the ſhortneſs of the time, within which proſecutions for offences againſt the ſtatute made in the third and fourth years of the reign of their late majeſties king *William* and queen *Mary*, [intituled, An act for the more effectual diſcovery and puniſhment of deer-ſtealers,] are limited to be commenced, has been a great encouragement to offenders; Be it therefore enacted by the authority aforeſaid, That any proſecution for any offence againſt the ſaid ſtatute, ſhall or may be commenced within three years, from the time of the offence committed, but not after.

3 & 4 W. & M. c. 10.

Proſecutions may be commenced within 3 years after offence committed.

Sect. 14. And for the better and more impartial trial of any indictment or information, which ſhall be found, commenced or proſecuted for any the offences committed againſt this act, Be it enacted by the authority aforeſaid, That every offence, that ſhall be done or committed contrary to this act, ſhall and may be inquired of, examined, tried and determined in any county within that part of the kingdom of *Great Britain* called *Enggland*, in ſuch manner and form, as if the fact had been therein committed: Provided, that no attainder for any of the offences made felony by virtue of this act, ſhall make or work any corruption of blood, loſs of dower, or forfeiture of lands or tenements, goods or chattels.

Such offences may be tried in any county.

Attainder not to work corruption of blood, &c.

Sect. 15. And be it further enacted by the authority aforeſaid, That this act ſhall be openly read at every quarter-ſeſſions, and at every leet or law-day.

This act, where to be read.

Sect. 16. And be it further enacted by the authority aforeſaid, That this act ſhall continue in force from the firſt day of *June* one thouſand ſeven hundred and twenty-three, for the ſpace of three years, and from thence to the end of the then next ſeſſion of parliament, and no longer. *Continued for five years* by 12 *Geo.* 1. *c.* 30.—*Made perpetual* by 31 *Geo.* 2. *c.* 42.

Sect. 17. And be it further enacted by the authority aforeſaid, That if any veniſon, or ſkin of any deer, ſhall be found in the cuſtody of any perſon or perſons, and it ſhall appear that ſuch perſon or perſons bought ſuch veniſon or ſkin of any one, who might be juſtly ſuſpected to have unlawfully come by the ſame, and does not produce the party of whom he bought it, or prove upon oath the name and place of abode of ſuch party, that

that then the perſon or perſons, who bought the ſame, ſhall be convicted of ſuch offence, by any one or more juſtice or juſtices of the peace, and ſhall be ſubject to the penalties inflicted for killing a deer, in and by the ſtatute made in the third and fourth year of the reign of their late majeſties king *William* and queen *Mary*, [intituled, An act for the more effectual diſcovery and puniſhment of deer-ſtealers.] 3 & 4 W. & M. c. 10.

Stat. 6 *Geo.* 2. *c.* 37. [*A. D.* 1733.] *Made, among other purpoſes,* "To prevent the cutting or breaking down the bank of any river, or any ſea bank, and to prevent the malicious cutting of hop-binds."

Sect. 5. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons, from and after the twenty-fourth day of *June*, which ſhall be in the year of our lord one thouſand ſeven hundred and thirty-three, and during the continuance of the laſt before mentioned act, ſhall unlawfully and maliciouſly break down, or cut down the bank or banks of any river, or any ſea banks, whereby any lands ſhall be overflowed or damaged, every perſon ſo offending, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer ſuch death as in caſes of felony, without benefit of clergy. Maliciouſly deſtroying banks of rivers, &c. felony without clergy.

Sect. 6. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons, from and after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-three, ſhall (during the continuance of the before mentioned act, intituled, An act for the more effectual puniſhing wicked and evil diſpoſed perſons, going armed in diſguiſe, and doing injuries and violences to the perſons and properties of his majeſty's ſubjects, and for the more ſpeedy bringing the offenders to juſtice;) unlawfully and maliciouſly cut any hop-binds growing on poles in any plantation of hops, every perſon or perſons ſo offending, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony, without benefit of clergy," Maliciouſly cutting hop-binds felony without clergy. 9 Geo. 1. c. 22. Continued by 10 Geo. 2. c. 32. Made perpetual by 31 Geo. 2. c. 42.

Stat. 27 *Geo.* 2. *c.* 15. [*A. D.* 1754. *Intituled*] "An act to explain and amend an act made in the ninth year of the reign of his late majeſty king *George* the firſt, intituled, An act for the more effectual puniſhing wicked and evil-diſpoſed perſons going armed and diſguiſed, and doing injuries and violences to the perſons and properties of his majeſty's ſubjects; and for the ſpeedy bringing the offenders to juſtice."

"Whereas by an act made in the ninth year of the reign of his late majeſty king *George* the firſt, intituled, An act for the more effectual puniſhing wicked and evil-diſpoſed perſons going armed and diſguiſed, and doing injuries and violences to the perſons and properties of his majeſty's ſubjects; and for the ſpeedy bringing the offenders to juſtice; it is amongſt other things enacted, That if any perſon or perſons, from and after the firſt of *June* in the year of our lord one thouſand ſeven hundred and twenty-three, ſhall knowingly ſend any letter without any name ſubſcribed thereto, or ſigned with a fictitious name, demanding money, veniſon or other valu- 9 Geo. 1. c. 22.

able thing, or ſhall forcibly reſcue any perſon being lawfully in cuſtody of any officer or other perſon, for any of the offences in the ſaid act mentioned, every perſon ſo offending, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony without benefit of clergy: And whereas divers letters have been ſent to ſeveral of his majeſty's ſubjects, threatening their lives or burning their houſes, which letters not demanding money, veniſon or any valuable effects, are not ſubject to the penalties of the ſaid act: To prevent the like miſchievous and iniquitous proceedings for the future, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons, from and after the firſt day of *May* one thouſand ſeven hundred and fifty-four, ſhall knowingly ſend any letter without any name ſubſcribed thereto, or ſigned with a fictitious name or names, letter or letters, threatening to kill or murder any of his majeſty's ſubject or ſubjects, or to burn their houſes, out-houſes, barns, ſtacks of corn or grain, hay or ſtraw, though no money or veniſon or other valuable thing ſhall be demanded in or by ſuch letter or letters; or ſhall forcibly reſcue any perſon being lawfully in cuſtody of any officer or other perſon for the ſaid offence; every perſon ſo offending, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony without benefit of clergy."

Perſons convicted of ſending threatening or incendiary letters,

or of reſcuing perſons in cuſtody for ſuch offences, to ſuffer death.

Black Lead.

STAT. 25 *Geo.* 2. *c.* 10. [*A. D.* 1752. *Intituled*] "An act for the more effectual ſecuring mines of black lead from theft and robbery."

"Whereas by experience it hath been found, that wad or black cawke, commonly called black lead, is and hath been neceſſary for divers uſeful purpoſes, and more particularly in the caſting bomb ſhells, round ſhot, and cannon balls; and that ſuch wad, black cawke, or black lead, hath hitherto been diſcovered in one mountain, or ridge of hills only in this realm; and that great waſte and deſtruction therein, hath of late years been made by wicked and evil-diſpoſed perſons, who, by reaſon of the ſituation of the mine or mines, wad-hole or wad-holes of the ſaid wad, black cawke or black lead, and of the great difficulty to ſecure and preſerve the ſame from being unlawfully broke, or by force entered into; and alſo by reaſon of the ſmall puniſhment by the laws now in being, annexed to offences of the like kind, have been encouraged unlawfully to enter, and by force to keep poſſeſſion of the ſame; and from thence unlawfully to take and carry away great quantities of the ſaid wad, black cawke or black lead; for the more effectual ſecurity of all

and

and every mine or mines, wad-hole or wad-holes of wad or black cawke, commonly called black lead; and for preventing the unlawful breaking and entering into the ſame; or the unlawful taking and carrying away from ſuch mine or mines, wad-hole or wad-holes, any wad, black cawke or black lead; and for puniſhing ſuch offenders in a more exemplary manner, than by the laws in being can now be done; May it therefore pleaſe your moſt excellent majeſty, that it may be enacted; and be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and every perſon or perſons that ſhall, from and after the twenty-fourth day of *June* which ſhall be in the year of our lord one thouſand ſeven hundred and fifty-two, unlawfully break, or by force enter into any mine or mines, wad-hole or wad-holes of wad or black cawke, commonly called black lead, or into any pit, ſhaft, adit or vein of wad, black cawke or black lead, with an intent to take and carry away from thence any wad, black cawke or black lead; or ſhall unlawfully from thence take and carry away any wad, black cawke or black lead, although ſuch mine or mines, wad-hole or wad-holes, pit, ſhaft, adit or vein, be not actually broke, or by force entered into by ſuch offender or offenders; or ſhall aid, abet, aſſiſt, hire or command any perſon or perſons to commit ſuch offence or offences as aforeſaid; that then, and in every ſuch caſe, all and every ſuch perſon or perſons ſhall be deemed and conſtrued to be guilty of felony; and it ſhall and may be lawful for the court, or judge, before whom any ſuch perſon or perſons ſo offending as aforeſaid, ſhall be lawfully convicted, to order ſuch offender or offenders to be committed to the priſon or gaol of the ſaid county, appointed for criminals, or to ſome houſe of correction within the ſame county, for a time not exceeding one year, there to be kept to hard labour during all the ſaid time, and to be publickly whipt by the common hangman, or by the maſter of ſuch houſe of correction, at ſuch times, and at ſuch places, and in ſuch manner, as ſuch court or judge ſhall think proper; or it ſhall and may be lawful to and for ſuch court or judge, or for any other ſubſequent court held at the ſame place, with the like authority as the former, to order ſuch offender or offenders to be tranſported to ſome of his majeſty's plantations beyond the ſeas, for a term not exceeding ſeven years, as ſuch court or judge ſhall think moſt proper; and thereupon judgment ſhall be given, that the perſon or perſons ſo convicted ſhall be committed and whipt, or tranſported accordingly; and if tranſportation ſhall be directed, the ſame ſhall be executed in ſuch manner, as is or ſhall be provided by law for the tranſportation of felons; and if any ſuch perſon or perſons ſo committed or tranſported, ſhall voluntarily eſcape or break priſon, or return from tranſportation before the expiration of the time for which he, ſhe or they ſhall be ordered to be tranſported, as aforeſaid, ſuch perſon or perſons being thereof lawfully convicted, ſhall ſuffer death as a felon, without benefit of clergy, and ſhall be tried for ſuch felony in the county where he, ſhe or they ſo eſcaped, or where he, ſhe or they ſhall be apprehended.

The entering any mines of black lead, with intent to ſteal,

or the aſſiſting or hiring perſons to do ſo, deemed felony;

and the offenders to be committed for a year, and publickly whipt;

or to be tranſported for 7 years;

and if they eſcape from priſon, or return from tranſportation, to ſuffer death;

and a certificate of the former conviction deemed sufficient proof thereof.

Sect. 2. "And be it further enacted by the authority aforesaid, That if any person shall be convicted or attainted of any of the offences aforesaid, and shall voluntarily escape, break prison or return from transportation as aforesaid, and shall be apprehended in any other county or city different from that wherein the said offence was committed, the clerk of the assize, or clerk of the peace for the county or city where such conviction or attainder for the said offence or offences was had, shall, at the request of the prosecutor, or of any other on his majesty's behalf, certify the same by a transcript in few words, containing the effect and tenor of such conviction or attainder, for which certificate two shillings and six pence, and no more shall be paid; and such certificate being produced in court shall be sufficient proof of such former conviction or attainder.

Receivers of lead, knowing such to be stolen, guilty of felony.

Sect. 3. "And be it further enacted by the authority aforesaid, That all and every person or persons, who shall, from and after the said twenty-fourth day of *June* one thousand seven hundred and fifty-two, buy or receive any wad or black cawke, commonly called *Black Lead*, knowing the same to be so unlawfully taken and carried away as aforesaid, shall be deemed and construed to be guilty of felony, and being convicted thereof, shall be subject and liable to all the pains and penalties, which any person or persons can or may by the laws and statutes of this realm be subject and liable to, for buying or receiving any goods or chattels that have been feloniously taken or stolen, knowing the same to have been stolen."

Blasphemy and Profaneness.

BLASPHEMY (from the *Greek* βλάπτω, *laedo*, and φήμη, *fama*) is an injury to God, by denying that which is due and belonging to him, or attributing to him what is not agreeable to his nature. *Lindw. prov. Const. c.* 1. *Profaneness* is irreverence of what is sacred. *Johns.*

All blasphemies against God, as denying his being or providence; all profane scoffing at the holy scripture, or exposing any part thereof to contempt or ridicule; impostures in religion, as falsly pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgment, *&c.* All open lewdness grosly scandalous, such as was that of those persons who exposed themselves naked to the people in a balcony in *Covent-Garden* with most abominable circumstances; offences of this nature, because they tend to subvert all religion or morality, which are the foundation of government, are punishable by the temporal judges with fine and imprisonment, and also such corporal infamous punishment as to the court in discretion shall seem meet, according to the heinousness of the crime. 1 *Hawk. P. C.* 6, 7.

Seditious words in derogation of the established religion are indictable, as tending to a breach of the peace; as these, your religion is a new religion,

gion, and preaching is but prattling, and prayer once a day is more edifying. 1 *Hawk. P. C.* 7.

Stat. 3 *Jac.* 1. *c.* 21. [*A. D.* 1605. *intituled*] "An act to reſtrain the abuſes of players."

"For the preventing and avoiding of the great abuſe of the holy name of God, in ſtage-plays, interludes, *May*-games, ſhews, and ſuch like; (2) Be it enacted by our ſovereign lord the king's majeſty, and by the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if at any time or times after the end of this preſent ſeſſion of parliament, any perſon or perſons do or ſhall, in any ſtage-play, interlude, ſhew, *May*-game or pageant, jeſtingly or prophanely ſpeak or uſe the holy name of God, or of Chriſt Jeſus, or of the Holy Ghoſt, or of the Trinity, which are not to be ſpoken but with fear and reverence, ſhall forfeit for every ſuch offence by him or them committed, ten pounds: (3) The one moiety thereof to the king's majeſty, his heirs and ſucceſſors, the other moiety thereof to him or them that will ſue for the ſame in any court of record at *Weſtminſter*, wherein no eſſoin, protection or wager of law ſhall be allowed." The penalty of players on ſtage, &c. profanely abuſing the name of God.

By the toleration act, 1 *Will. & M. ſeſſ.* 1. *c.* 18. *ſect.* 17. No perſon ſhall have any benefit of that act, who ſhall deny in his preaching or writing, the doctrine of the Bleſſed Trinity, as it is ſet forth in the thirty-nine articles.

Stat. 9 & 10 *Will. c.* 32. [*A. D.* 1698. *intituled*] "An act for the more effectual ſuppreſſing of blaſphemy and profaneneſs."

"Whereas many perſons have of late years openly avowed and publiſhed many blaſphemous and impious opinions, contrary to the doctrines and principles of the chriſtian religion, greatly tending to the diſhonour of Almighty God, and may prove deſtructive to the peace and welfare of this kingdom: Wherefore, for the more effectual ſuppreſſing of the ſaid deteſtable crimes, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons, having been educated in, or at any time having made profeſſion of, the chriſtian religion within this realm, ſhall, by writing, printing, teaching, or adviſed ſpeaking, deny any one of the perſons of the Holy Trinity to be God, or ſhall aſſert or maintain there are more Gods than one, or ſhall deny the chriſtian religion to be true, or the holy ſcriptures of the Old and New Teſtament to be of divine authority, and ſhall upon indictment or information in any of his majeſty's courts at *Weſtminſter*, or at the aſſizes, be thereof lawfully convicted by the oath of two or more credible witneſſes, ſuch perſon or perſons for the firſt offence ſhall be adjudged incapable and diſabled in law, to all intents and purpoſes whatſoever, to have or enjoy any office or offices, employment or employments, eccleſiaſtical, civil, or military, or any part in them, or any profit or advantage Perſons denying the Trinity, or aſſerting there are more Gods than one, or denying the chriſtian religion to be true, &c being convicted thereof, diſabled to hold any office, &c.

Further diſabilities if a ſecond time convicted thereof.

vantage appertaining to them, or any of them: And if any perſon or perſons ſo convicted, as aforeſaid, ſhall at the time of his or their conviction enjoy or poſſeſs any office, place or employment, ſuch office, place or employment, ſhall be void, and is hereby declared void: And if ſuch perſon or perſons ſhall be a ſecond time lawfully convicted, as aforeſaid, of all or any the aforeſaid crime or crimes, that then he or they ſhall from thenceforth be diſabled to ſue, proſecute, plead, or uſe any action or information in any court of law or equity, or to be guardian of any child, or executor or adminiſtrator of any perſon, or capable of any legacy or deed of gift, or to bear any office, civil or military, or benefice eccleſiaſtical for ever within this realm, and ſhall alſo ſuffer impriſonment for the ſpace of three years, without bail or mainprize, from the time of ſuch conviction.

No proſecution unleſs information be given in four days after words ſpoken, &c.

Sect. 2. "Provided always, and be it enacted by the authority aforeſaid, That no perſon ſhall be proſecuted by virtue of this act, for any words ſpoken, unleſs the information of ſuch words ſhall be given upon oath before one or more juſtice or juſtices of the peace, within four days after ſuch words ſpoken, and the proſecution of ſuch offence be within three months after ſuch information.

Perſon for the firſt offence, (on renouncing his opinion in four months after conviction) ſhall be diſcharged from penalty, &c.

Sect. 3. "Provided alſo, and be it enacted by the authority aforeſaid, That any perſon or perſons, convicted of all or any of the aforeſaid crime or crimes, in manner aforeſaid, ſhall for the firſt offence (upon his, her or their acknowledgment and renunciation of ſuch offence or erroneous opinions, in the ſame court where ſuch perſon or perſons was or were convicted, as aforeſaid, within the ſpace of four months, after his, her or their conviction) be diſcharged from all penalties and diſabilities incurred by ſuch conviction; any thing in this act contained to the contrary thereof in any wiſe notwithſtanding."

22 Geo. 2. c. 33.

By ſtat. 22 *Geo.* 2. *c.* 33. *art.* 2. All perſons in or belonging to his majeſty's ſhips or veſſels of war, being guilty of profane oaths, curſings, execrations, drunkenneſs, uncleanneſs, or other ſcandalous actions, in derogation of God's honour, and corruption of good manners, ſhall incur ſuch puniſhment as a court martial ſhall think fit to impoſe.

Chriſtianity is part of the law. Strange 834. Eaſt. 2 Geo. 2. Rex v. Woolſton.

He was convicted on four informations for his blaſphemous diſcourſes on the miracles of our Saviour: and attempting to move in arreſt of judgment, the court declared they would not ſuffer it to be debated, whether to write againſt chriſtianity *in general* was not an offence puniſhable in the temporal courts at common law; it having been ſettled ſo to be in *Taylor*'s caſe in 1 *Vent.* 293. 3 *Keb.* 607, 621. and in the caſe of the *King v. Hall*, (*Stran.* 416.) They deſired it might be taken notice of, that they laid their ſtreſs upon the word *general*, and did not intend to include diſputes between learned men upon particular controverted points. The next term he was brought up, and fined 25 *l.* for each of his four diſcourſes, to ſuffer a year's impriſonment, and to enter into a recognizance for his good behaviour during his life, himſelf in 3000 *l.* and 2000 *l.* by others.

Information

Information exhibited by the attorney general againſt the defendant *Edmund Curl*, for that he *exiſtens homo iniquus et ſceleratus ac nequiter machinans et intendens bonos mores ſubditorum hujus regni corrumpere, et eos ad nequitiam inducere quendam turpem iniquum et obſcaenum libellum intitulat' Venus in the cloiſter, or the Nun in her ſmock, impie et nequiter impreſſit et publicavit, ac imprimi et publicari cauſavit*, (ſetting out the ſeveral lewd paſſages,) *in malum exemplum, &c.* And of this the defendant was found guilty. And in *Trinity* term laſt it was moved in arreſt of judgment by Mr. *Marſh*, that however the defendant may be puniſhable for this in the ſpiritual court as an offence *contra bonos mores*, yet it can't be a libel for which he is puniſhable in the temporal court. *Libellus* is a diminutive of the word *liber*, and 'tis *libellus* from it's being a book, and not from the matter of its contents. In the caſe *de libellis famoſis*, my lord *Coke* ſays, that it muſt be againſt the public, or ſome private perſon, to be a libel; and I don't remember ever to have heard this opinion contradicted. Whatever tends to corrupt the morals of the people, ought to be cenſured in the ſpiritual court, to which properly all ſuch cauſes belong: what their proceedings are I am a ſtranger to; but for me 'tis ſufficient to ſay, I don't find any caſe wherein they were ever prohibited in ſuch a cauſe. In the reign of king *Charles* the ſecond there was a filthy run of obſcene writings, for which we meet with no proſecution in the temporal courts; and ſince theſe were things not fit to go unpuniſhed, it is to be ſuppoſed that my lords the biſhops animadverted upon them in their courts. In the caſe of *The Queen* v. *Read*, 6 *Ann.* in *B. R.* there was an information for a libel in writing an obſcene book called *The fifteen Plagues of a Maidenhead*, and after conviction it was moved in arreſt of judgment, that this was not puniſhable in the temporal courts; and the opinion of chief juſtice *Holt* was ſo ſtrong with the objection, that the proſecutor never thought fit to ſtir it again.

An obſcene book is puniſhable as a libel againſt religion and morality. Stra. 788 Mich. 1 Geo. 2. Rex v. Curl.

Mr. attorney general *contra*: I do not obſerve it is pretended there is any other way of puniſhing the defendant; for if the ſpiritual court had done it, inſtances might be given; and it is no argument to ſay we meet with no prohibitions; ſuch a way of arguing would conſtrue them into all ſorts of juriſdictions.

What I inſiſt upon is, that this is an offence at common law, as it tends to corrupt the morals of the king's ſubjects, and is againſt the *peace* of the king. *Peace* includes good order and government, and that peace may be broken in many inſtances without an actual force. 1. If it be an act againſt the conſtitution or civil government; 2. If it be againſt religion: and 3. If againſt morality.

1. Under the firſt head fall all the caſes of ſeditious words or writings. 2 *Roll. Abr.* 78. *pl.* 2. 1 *Vent.* 324. 3 *Keb.* 841. and the caſe of *The Queen* v. *Bedford*, *Mich.* 12 *Ann.* whoſe treatiſe of hereditary right was held to be a libel, though it contained no reflection upon any part of the then government.

2. It is a libel if it reflects upon religion, that great baſis of civil government and ſociety; and it may be both a ſpiritual and temporal offence.

Cro. Jac. 421. 2 *Roll. Abr.* 78. *pl.* 2. 1 *Vent.* 293. 3 *Keb.* 607, 621. In *Tremayne's Entries* 226. there is a ſentence to have a paper fixed over the defendant's head, intimating that he had uttered blaſphemous words tending to the ſubverſion of government. There is one *Hall* now in cuſtody on a conviction as for a libel, intitled *A ſober Reply to the Merry Arguments about the Trinity*, and *Paſch.* 10 *Ann. Regina* v. *Clendon*, there was a ſpecial verdict on a libel about the Trinity, and it was not made a doubt of in that caſe.

3. As to morality. Deſtroying that, is deſtroying the peace of the government, for government is no more than public order, which is morality. My lord chief juſtice *Hale* uſed to ſay, chriſtianity is part of the law, and why not morality too? I do not inſiſt that every immoral act is indictable, ſuch as telling a lie, or the like; but if it is deſtructive of morality in general, if it does, or may, affect all the king's ſubjects, it then is an offence of a public nature. And upon this diſtinction it is, that particular acts of fornication are not puniſhable in the temporal courts, and bawdy-houſes are. In Sir *Charles Sedley*'s caſe it was ſaid, that this court is the *cuſtos morum* of the king's ſubjects. 1 *Sid.* 168. And upon this foundation there have been many proſecutions againſt the players for obſcene plays, tho' they have had intereſt enough to get the proceedings ſtayed before judgment. *Tremayne's Entries* 209, 213, 214, 215. 3d Vol. *State Trials*, lord *Grey*'s caſe.

Mich. 10 *W.* 3. *Rex* v. *Hill*, the defendant was indicted for printing ſome obſcene poems of my lord *Rocheſter*'s, tending to the corruption of youth; upon which he went abroad, and was outlawed; which he would not have done if his counſel had thought it no libel.

The ſpiritual courts puniſh only perſonal ſpiritual defamation by words; if it is reduced to writing, it is a temporal offence. *Salk.* 552. *Mo.* 627. and it is puniſhable as a libel. My lord *Coke* in the caſe *de libellis famoſis* had nothing in view but ſcandalous defamatory libels. *Libellus* is not always to be taken as a technical word; in this caſe it may ſtand as an obſcene little book. And as to the caſe of *Read*, there was no judgment, but it went off upon the chief juſtice's ſaying, Why don't you go to the ſpiritual court; which was giving a falſe reaſon for that ſudden opinion, now it appears there is no inſtance of the ſpiritual court's intermeddling, where it is reduced to writing or in print.

Chief juſtice: I think this a caſe of very great conſequence, though if it was not for the caſe of *The Queen* v. *Read*, I ſhould make no great difficulty of it. Certainly the ſpiritual court has nothing to do with it, if in writing: and if it reflects on religion, virtue, or morality, if it tends to diſturb the civil order of ſociety, I think it is a temporal offence. I do not think *libellus* is always to be taken as a technical word. Would not trover lie *de quodam libello intitulat'* the New Teſtament, and does not the ſpiritual court proceed upon a libel?

Forteſcue J. I own this is a great offence, but I know of no law, by which we can puniſh it. Common law is common uſage, and where there is no law there can be no tranſgreſſion. At common law drunkenneſs, or curſing

ſing and ſwearing, were not puniſhable; and yet I do not find the ſpiritual court took notice of them. This is but a general ſolicitation of chaſtity, and not indictable. Lady *Purbeck*'s caſe was for procuring men and women to meet at her houſe, and held not indictable, unleſs there had been particular facts to make it a bawdy-houſe. To make it indictable there ſhould be a breach of the peace, or ſomething tending to it, of which there is nothing in this caſe. A libel is a technical word at common law, and I muſt own the caſe of *The Queen* v. *Read* ſticks with me, for there was a rule to arreſt the judgment *niſi*. And in Sir *Charles Sedley*'s caſe there was a force in throwing out bottles upon peoples heads.

Reynolds J. It is much to be lamented if this is not puniſhable: I agree there may be many inſtances, where acts of immorality are of ſpiritual cognizance only; but then thoſe are particular acts, where the proſecution is *pro ſalute animae* of the offender, and not where they are of a general immoral tendency: which I take to be a reaſonable diſtinction. *Read*'s caſe is indeed a caſe in point. But I confeſs I ſhould not have been of that opinion. *Libellus* does not *ex vi termini* import defamation, but is to be governed by the epithet which is added to it. This is ſurely worſe than Sir *Charles Sedley*'s caſe, who only expoſed himſelf to the people then preſent, who might chooſe whether they would look upon him or not; whereas this book goes all over the kingdom. Drunkenneſs and ſwearing were puniſhable in the ſpiritual court before the acts which made them temporal offences, and in which the juriſdiction of the ſpiritual court is ſaved.

Probyn J. inclined this to be puniſhable at common law, as an offence againſt the peace, in tending to weaken the bonds of civil ſociety, virtue, and morality. But it being a caſe of great conſequence, it was ordered to ſtand over for a further argument.

And this term *Page* J. being come into the *King's Bench* in the room of juſtice *Forteſcue*, it was to have been ſpoke to by Mr. ſolicitor general and myſelf. But *Curl* not having attended me in time, I acquainted the court I was not prepared: and my want of being ready proceeding from his own neglect, they refuſed to indulge him to the next term. And in two or three days, they gave it as their unanimous opinion, that this was a temporal offence. They ſaid it was plain the force uſed in *Sedley*'s caſe was but a ſmall ingredient in the judgment of the court, who fined him 2000*l*. And if the force was all they went upon, there was no occaſion to talk of the court's being *cenſor morum* of the king's ſubjects. They ſaid if *Read*'s caſe was to be adjudged, they ſhould rule it otherwiſe: and therefore in this caſe they gave judgment for the king. And the defendant was afterwards ſet in the pillory, as he well deſerved.

In the year 1656, *James Nayler*, for perſonating our Saviour and ſuffering his followers to worſhip him, and pay him divine honours, was ſentenced to be ſet in the pillory, and to have his tongue bored through with a red hot iron, and to be whipped, and ſtigmatized in the forehead with the letter B. See Swearing. 1 State Trit. 802.

Books.

STAT. 7 *Ann. c.* 14. [*A. D.* 1708. *intituled*] "An act for the better preſervation of parochial libraries in that part of *Great Britain* called *England*."

Sect. 10. "And it is further enacted and declared by the authority aforeſaid, that in caſe any book or books be taken or otherwiſe loſt out of the ſaid library, it ſhall and may be lawful to or for any juſtice of peace within the county, riding, or diviſion, to grant his warrant to ſearch for the ſame, and in caſe the ſame be found, ſuch book or books ſo found ſhall immediately, by order of ſuch juſtice, be reſtored to the ſaid library; any law, ſtatute, or uſage to the contrary in any wiſe notwithſtanding."

Bread.

STATUTE 31 *Geo.* 2. *c.* 29. [*A. D.* 1757. *intituled*] "An act for the due making of bread; and to regulate the price and aſſize thereof; and to puniſh perſons who ſhall adulterate meal, flour or bread."

Preamble, reciting act 51 Hen. 3. and 8 Ann.

Whereas by an act of parliament made in the one and fiftieth year of the reign of king *Henry* the third, intituled, *Aſſiſa Panis & cerviſiæ*, proviſion was made, amongſt other things, for ſettling the aſſize of bread: And whereas by an act of parliament made in the eighth year of the reign of her late majeſty queen *Ann*, intituled, *An act to regulate the price and aſſize of bread*, ſo much of the ſaid act (intituled, *Aſſiſa Panis & cerviſiæ)* as related to the aſſize of bread, was repealed, annulled, and made void; and the ſaid act made in the ſaid eighth year of the reign of her ſaid late majeſty queen *Ann*, was only made to continue in force for three years, and from thence to the end of the then next ſeſſion of parliament, but by ſome ſubſequent acts of parliament, the ſaid in part recited act made in the ſaid eighth year of her ſaid majeſty queen *Ann*, with ſeveral alterations and amendments thereto, hath been continued until the twenty-fourth day of *June* one thouſand ſeven hundred and fifty-ſeven, and from thence to the end of the then next ſeſſion of parliament: And whereas it is expedient to reduce into one act the ſeveral laws now in force relating to the due making, and to the price and aſſize of bread, and to make ſome alterations in, and amendments to, the ſame; Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That the ſaid act made in the ſaid eighth year of the reign of her ſaid late majeſty queen *Ann*, and all alterations and amend-

The recited act of 8 Ann. and other acts

ments

ments made by any acts of parliament subsequent thereto, for continuing, explaining, or amending the same, is and are hereby further continued from the expiration thereof, until the twenty-ninth day of *September* one thousand seven hundred and fifty-eight; and that from and after the said twenty-ninth day of *September* one thousand seven hundred and fifty-eight, so much of the said statute (intituled, *Assisa Panis & cervisiæ*) as relates to the assize of bread, and which would otherwise be revived, when the said recited act made in the said eighth year of her said late majesty queen *Ann*, shall expire; and also the said act of parliament made in the said eighth year of the reign of her said late majesty queen *Ann*, and all the alterations and amendments made by any acts of parliament subsequent thereto, for continuing, explaining, or amending the same, shall be and are hereby repealed, annulled, and made void.

Subsequent, and relating thereto, continued to 29 Sept. 1758; from which time so much of the act of 51 Hen. 3. as relates to the assize of bread, and act 8 Ann. and other acts continuing, or amending, the same, are repealed.

Sect. 2. "And, to the intent that from and after the said twenty-ninth day of *September*, a plain and constant rule and method may be duly observed and kept in the making and assizing of the several sorts of bread which shall be made for sale in any place or places where an assize of bread shall at any time be thought proper to be set in pursuance of this act; Be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September* it shall be lawful for the court, or person or persons herein after authorized by this act to set the assize of bread, to set, ascertain, and appoint, in any place or places within their respective jurisdictions, the assize and weight of all sorts of bread, which shall, in any such place or places, be made for sale, or exposed to sale, and the price to be paid for the same respectively, when, and as often, from time to time, as any such court, or person or persons as aforesaid, shall think proper; and that in every assize of bread which shall be set in pursuance of this act, respect shall, from time to time, be had by the court, person or persons as aforesaid, who shall set the same, to the price which the grain, meal, or flour, whereof such bread shall be made, shall bear in the publick market or markets, in or near the place or places for which any such assize shall be so at any time set; and making, from time to time, reasonable allowance to the makers of bread for sale, where any such assize shall be so set for their charges, labour, pains, livelihood, and profit, as such court, or person or persons as aforesaid respectively, who shall at any time think fit to set any such assize, shall, from time to time, deem proper.

General ordinance for setting an assize and price of bread.

Assize to be regulated by the price the grain, meal or flour bears in the market, and the profit to be allowed to the baker.

Sect. 3. "And be it further enacted by the authority aforesaid, that from and after the said twenty-ninth day of *September*, where an assize of bread shall at any time be thought proper to be set for any place or places by virtue of this act, no person or persons shall there make for sale, or sell, or expose to or for sale, any sort of bread, except wheaten and household, otherwise brown bread, and such other sort or sorts of bread, as in such place or places shall be publickly allowed to be made or sold, by the court, or person or persons, who by this act are authorized to set an assize of bread for any such place or places; but where it hath been usual to make bread with the meal or flour of rye, barley oats, beans, or pease, or with the meal or flour of any such different sorts of grain mixed together, or the

Where an assize shall be set, no sort of bread (wheaten and household excepted) other than what is thereby allowed to be made for sale;

court, or perſon or perſons impowered to ſet an aſſize of bread by virtue of this act, ſhall at any time think fit to order or allow in any place or places within the limits of their reſpective juriſdictions, bread to be made with rye, barley, oats, beans or peaſe, or with the flour or meal thereof, or with the meal or flour of any ſuch different ſorts of grain mixed together, ſuch bread ſhall and may be there made and ſold; and if any perſon ſhall offend in the premiſſes, and ſhall be convicted of any ſuch offence, either by his, her, or their own confeſſion, or by the oath of one or more credible witneſs or witneſſes, before any magiſtrate or magiſtrates, juſtice or juſtices of the peace, within the limits of his or their juriſdiction, every one ſo offending ſhall, on every ſuch conviction, forfeit and pay any ſum not exceeding forty ſhillings, nor leſs than twenty ſhillings, as any ſuch magiſtrate or magiſtrates, juſtice or juſtices, ſhall think fit and order.

under penalty of forfeiting not exceeding 40 s. nor leſs than 20 s.

Sect. 4. And be it alſo enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September*, in every place and places for which an aſſize of bread ſhall at any time be thought proper to be ſet by virtue of this act, the aſſize and weight of the ſeveral ſorts of bread which ſhall be there made for ſale, or ſold, or expoſed to or for ſale, and the price to be paid for the ſame reſpectively, ſhall be ſet and aſcertained according to the tables hereafter following, marked N° I. and II.

Aſſize and price of bread to be ſet according to the two following tables mark'd N° I. and N° II.

N° I. A TABLE.

N° I.

A TABLE of the Aſſize and Price of bread made of Wheat, in Two Parts.

Part the Firſt, or The Aſſize Table,

Contains, in column N° I. the price of the buſhel of wheat *Wincheſter* meaſure, from 2 s. 9 d. to 14 s. 6d. the buſhel, the allowance of the magiſtrates or juſtices to the baker, for baking, being included; and in column N° II. are the weights of the ſeveral loaves: ſo that for example) if the price of wheat in the market is 5 s. the buſhel, and the magiſtrates allow 1 s. 6 d. the buſhel to the baker for baking, find 6 s. 6. d. in column N° I. and even therewith, under N° II. will be found the weights of the ſeveral loaves; but if the price in the market is 3 s. and the allowance 1 s. then the weight of the ſaid loaves will be found even with 4 s.

Note, That the wheaten loaves are three-fourths of the weight of the houſehold loaves; and if the magiſtrates or juſtices ſhall think fit to allow of any white loaves of the price of one penny or two pence, they are to weigh at all times three-fourths of the weight of the wheaten loaves of the ſame price.

Part the Second, or, The Price Table;

Contains, in column N° II. the price of the buſhel of wheat *Wincheſter* meaſure, from 2 s. 9 d. to 14 s. 6d. the buſhel, the allowance of the magiſtrates or juſtices to the baker, for baking, being included; and in column N° I. are the prices of the peck, half peck, and quartern, wheaten and houſehold loaves: ſo that (for example) if the price of wheat in the market is 5 s. the buſhel, and the magiſtrates allow 1 s. 6 d. to the baker for baking, find 6 s. 6 d. in N° II. and even therewith under N° I. will be found the prices of the ſeveral loaves; but if the price in the market is 3 s. the buſhel, and the allowance 1 s. then the prices of the ſaid loaves will be found even with 4 s.

Note, That the prices of the houſehold loaves are always three-fourths of the prices of the wheaten loaves; and where it ſhall be thought proper to allow of half quartern loaves, the prices of ſuch loaves (if ſold ſingly) are to be half a farthing higher than is allowed by this table, when it ſhall ſo happen that the farthing is ſplit.

And magiſtrates and juſtices, within their reſpective juriſdictions, being to ſet the aſſize, and fix the price, of the ſeveral loaves of bread, having reſpect to the price which the grain, meal or flour, of which the ſame are made, ſhall bear in the market; but no proviſion being made how they ſhould know what price the reſpective ſorts of meal and flour ſhould be eſteemed to bear, in proportion to the price of wheat, they are therefore to take notice, That the peck loaf of each ſort of bread is to weigh, when well baken, 17 lb. 6 ounces averdupois, and the reſt in proportion; and that every ſack of meal or flour is to weigh 2 cwt. 2 qrs. net; and that from every ſack of meal or flour there ought to be produced, on the average, 20 ſuch peck loaves of bread; and by obſerving the ſaid rule, magiſtrates and juſtices may at all times know if the baker hath more or leſs than the allowance they intend to give him. N° I.

N° I.

N° II.

Part the First; or, The Assize Table.

The Price of the Bushel of Wheat and Baking.		Small Assize Bread.						Large Assize Bread.																					
		The Penny Loaf.				Twopenny Loaf.				Sixpenny Loaf.				Twelvepenny Loaf.				Eighteenpenny Loaf.											
		Wheaten		Houshold		Wheaten		Houshold		Wheaten		Houshold.		Wheaten		Houshold		Wheaten		Houshold									
s.	d.	oz.	dr	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.						
2	9	22	4	29	4	2	12	8	3	10	8	3	5	8	10	15	9	16	11	0	21	15	2	25	0	8	32	14	11
3	0	20	4	27	1	2	8	8	3	6	2	7	9	8	10	2	6	15	3	0	20	4	12	22	12	8	30	7	2
3	3	18	9	25	4	2	5	1	3	2	9	6	15	4	9	7	11	13	14	7	18	15	5	20	13	11	28	7	0
3	6	17	6	23	3	2	2	12	2	14	5	6	8	4	8	11	0	13	0	9	17	6	1	19	8	13	26	1	1
3	9	16	6	21	6	2	0	11	2	10	12	6	2	2	8	0	5	12	4	4	16	0	11	18	6	7	24	1	0
4	0	15	4	20	4	1	14	8	2	8	8	5	11	8	7	9	8	11	7	0	15	3	0	17	2	8	22	12	8
4	3	14	4	19	1	1	12	8	2	6	2	5	5	9	7	2	6	10	11	2	14	4	12	16	0	11	21	7	2
4	6	13	9	17	15	1	11	2	2	3	14	5	1	6	6	11	10	10	2	12	13	7	4	15	4	2	20	2	14
4	9	12	12	17	1	1	9	9	2	2	2	4	12	11	6	6	7	9	9	7	12	12	14	14	6	2	19	3	5
5	0	12	1	16	6	1	8	3	2	0	11	4	8	9	6	2	2	9	1	1	12	4	4	13	9	01	18	6	7
5	3	11	9	15	7	1	7	3	1	14	14	4	5	8	5	12	11	8	11	1	11	9	6	13	0	9	17	6	1
5	6	11	2	14	10	1	6	4	1	13	4	4	2	12	5	7	13	8	5	8	10	15	10	12	8	3	16	7	7
5	9	10	8	14	4	1	5	0	1	12	8	3	15	0	5	5	9	7	14	0	10	11	2	11	13	0	16	0	11
6	0	10	2	13	9	1	4	4	1	11	2	3	12	12	5	1	6	7	9	8	10	2	12	11	6	4	15	4	2
6	3	9	11	13	1	1	3	6	1	10	1	3	10	2	4	14	3	7	4	4	9	12	6	10	14	6	14	10	9
6	6	9	4	12	10	1	2	9	1	9	4	3	7	10	4	11	13	6	15	4	9	7	11	10	6	13	14	3	8
6	9	9	0	12	1	1	1	15	1	8	3	3	5	13	4	8	9	6	11	10	9	1	1	10	1	7	13	9	10
7	0	8	11	11	9	1	1	6	1	7	3	3	4	2	4	5	8	6	8	4	8	11	1	9	12	7	13	0	9
7	3	8	7	11	2	1	0	14	1	6	4	3	2	9	4	2	12	6	5	2	8	5	8	9	7	11	12	8	3
7	6	8	3	10	11	1	0	6	1	5	6	3	1	1	4	0	3	6	2	2	8	0	5	9	3	3	12	0	8
7	9	7	14	10	6	0	15	12	1	4	12	2	15	4	3	14	5	5	14	8	7	12	10	8	13	12	11	10	15
8	0	7	10	10	2	0	15	4	1	4	4	2	13	12	3	12	12	5	11	8	7	9	8	8	9	4	11	6	4
8	3	7	5	9	15	0	14	10	1	3	14	2	11	14	3	11	9	5	7	13	7	7	3	8	3	11	11	2	12
8	6	7	2	9	9	0	14	4	1	3	3	2	10	12	3	9	8	5	5	9	7	3	1	8	0	5	10	12	9
8	9	6	15	9	4	0	13	14	1	2	9	2	9	11	3	7	10	5	3	7	6	15	4	7	13	2	10	6	13
9	0	6	13	8	15	0	13	9	1	1	14	2	8	11	3	5	11	5	1	6	6	11	6	7	10	1	10	1	1
9	3	6	9	8	12	0	13	2	1	1	8	2	7	7	3	4	9	4	14	14	6	9	2	7	6	5	9	13	10
9	6	6	7	8	8	0	12	14	1	1	0	2	6	9	3	2	15	4	13	2	6	5	14	7	3	11	9	8	13
9	9	6	4	8	5	0	12	8	1	0	10	2	5	8	3	1	14	4	11	0	6	3	12	7	0	8	9	5	10
10	0	6	1	8	2	0	12	1	1	0	5	2	4	4	3	0	15	4	8	9	6	1	14	6	12	13	9	2	13
10	3	5	15	7	15	0	11	13	0	15	14	2	3	8	2	15	11	4	7	0	5	15	5	6	10	8	8	15	0
10	6	5	13	7	12	0	11	9	0	15	7	2	2	12	2	14	5	4	5	8	5	12	11	6	8	4	8	11	0
10	9	5	11	7	9	0	11	6	0	15	1	2	2	1	2	13	3	4	4	2	5	10	6	6	6	2	8	7	9
11	0	5	9	7	5	0	11	2	0	14	10	2	1	6	2	11	14	4	2	12	5	7	13	6	4	2	8	3	10
11	3	5	6	7	3	0	10	13	0	14	5	2	0	7	2	10	15	4	0	14	5	5	14	6	1	5	8	0	13
11	6	5	5	7	1	0	10	10	0	14	2	1	15	14	2	10	6	3	15	12	5	4	12	5	15	10	7	15	2
11	9	5	2	6	15	0	10	5	0	13	14	1	14	14	2	9	11	3	13	13	5	3	7	5	12	11	7	13	2
12	0	5	1	6	13	0	10	2	0	13	9	1	14	5	2	8	11	3	12	11	5	1	6	5	11	0	7	10	1
12	3	4	15	6	10	0	9	15	0	13	4	1	13	13	2	7	12	3	11	9	4	15	7	5	9	6	7	7	3
12	6	4	14	6	8	0	9	12	0	12	15	1	13	4	2	6	13	3	10	9	4	13	10	5	7	13	7	4	7
12	9	4	13	6	5	0	9	9	0	12	10	1	12	12	2	5	15	3	9	8	4	11	13	5	6	5	7	1	12
13	0	4	11	6	4	0	9	5	0	12	8	1	11	15	2	5	8	3	7	14	4	11	0	5	3	13	7	0	8
13	3	4	9	6	3	0	9	2	0	12	6	1	11	5	2	5	1	3	6	10	4	10	2	5	1	15	6	15	4
13	6	4	8	6	1	0	9	0	0	12	1	1	11	0	2	4	4	3	6	0	4	8	9	5	1	0	6	12	13
13	9	4	7	5	15	0	8	13	0	11	13	1	10	7	2	3	8	3	4	14	4	7	0	4	15	5	6	10	8
14	0	4	5	5	13	0	8	11	0	11	9	1	10	1	2	2	12	3	4	2	4	5	8	4	14	3	6	8	4
14	3	4	4	5	11	0	8	8	0	11	6	1	9	9	2	2	1	3	3	2	4	4	2	4	12	11	6	6	2
14	6	4	3	5	9	0	8	6	0	11	2	1	9	2	2	1	6	3	2	4	4	2	12	4	11	6	6	4	2

Nº I.

Part the Second.

Prized Bread.

Nº II.

Quartern Loaf.				Halfpeck Loaf.				Peck Loaf.				The Price of the Bushel of Wheat, and Baking.		
Wheaten.		Houſhold		Wheaten		Houſhold		Wheaten		Houſhold				
s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	
0	3 ¼	0	2 ¼	0	6 ¼	0	4 ¾	1	0 ½	0	9 ½	2	9	
0	3 ½	0	2 ½	0	7	0	5 ¼	1	1 ¼	0	10 ¼	3	0	
0	3 ¾	0	2 ¾	0	7 ½	0	5 ½	1	3	0	11	3	3	
0	4	0	3	0	8	0	6	1	4	0	1	0	3	6
0	4 ¼	0	3 ¼	0	8 ½	0	6 ½	1	5	0	1	1	3	9
0	4 ½	0	3 ½	0	9	0	6 ¾	1	6	1 ¼	1	¾	4	0
0	4 ¾	0	3 ¾	0	9 ¾	0	7 ¼	1	7	1 ½	1	2 ½	4	3
0	5	0	3	0	10 ¼	0	7 ½	1	8	1 ½	1	3 ½	4	6
0	5 ¼	0	4	0	10 ¾	0	8	1	9	1 ¾	1	4 ¼	4	9
0	5 ¾	0	4 ¼	0	11 ½	0	8 ½	1	11		1	5	5	0
0	6	0	4 ½	1	0	0	9	2	0		1	6	5	3
0	6 ¼	0	4 ¾	1	0 ½	0	9 ½	2	1		1	7	5	6
0	6 ¾	0	5	1	1 ¼	0	9 ¾	2	2 ½		1	7 ½	5	9
0	7	0	5 ¼	1	1 ¾	0	10 ½	2	3 ½		1	8 ½	6	0
0	7 ¼	0	5 ½	1	2 ¼	0	10 ¾	2	4 ¾		1	9 ¼	6	3
0	7 ½	0	5 ¾	1	3	0	11	2	6		1	10	6	6
0	7 ¾	0	6	1	3 ½	0	11 ½	2	7		1	11	6	9
0	8	0	6 ¼	1	4	1	0	2	8		2	0	7	0
0	8 ¼	0	6 ½	1	4 ½	1	0 ½	2	9		2	1	7	3
0	8 ½	0	6 ¾	1	5	1	1	2	10		2	2	7	6
0	8 ¾	0	7	1	5 ½	1	1 ½	2	11 ¼		2	2 ¾	7	9
0	9 ¼	0	7 ¼	1	6 ¼	1	2	3	0 ½		2	3 ½	8	0
0	9 ½	0	7 ½	1	7	1	2 ½	3	2		2	4	8	3
0	9 ¾	0	7 ¾	1	7 ½	1	3	3	3		2	5	8	6
0	10	0	8	1	8	1	3 ½	3	4		2	6	8	9
0	10 ¼	0	8 ¼	1	8 ½	1	4	3	5		2	7	9	0
0	10 ½	0	8 ½	1	9	1	4 ½	3	6 ¼		2	7 ¾	9	3
0	10 ¾	0	8 ¾	1	9 ¾	1	5	3	7 ¼		2	8 ¾	9	6
0	11	0	9	1	10 ¼	1	5 ½	3	8 ½		2	9 ½	9	9
0	11 ½	0	9 ½	1	11	1	6	3	10		2	10	10	0
0	11 ¾	0	9 ¾	1	11 ½	1	6 ½	3	11		2	11	10	3
1	0	0	10	2	0	1	7	4	0		3	0	10	6
1	0 ½	0	10 ½	2	0 ½	1	7 ½	4	1		3	1	10	9
1	0 ¾	0	10 ¾	2	1	1	8	4	2		3	2	11	0
1	1	0	11	2	1 ½	1	8 ½	4	3 ¼		3	2 ¾	11	3
1	1 ¼	0	11 ½	2	2 ¼	1	9	4	4 ½		3	3 ½	11	6
1	1 ½	0	11 ¾	2	3	1	9 ½	4	6		3	4	11	9
1	1 ¾	0	12	2	3 ½	1	10	4	7		3	5	12	0
1	2	1	0 ½	2	4	1	10 ½	4	8		3	6	12	3
1	2 ¼	1	1	2	4 ½	1	11	4	9		3	7	12	6
1	2 ½	1	1 ½	2	5	1	11 ½	4	10		3	8	12	9
1	2 ¾	1	2	2	5 ½	2	0	4	11 ½		3	8 ½	13	0
1	3	1	2 ½	2	6	2	0 ½	5	1		3	9	13	3
1	3 ¼	1	3	2	6 ½	2	1	5	2		3	10	13	6
1	3 ½	1	3 ½	2	7	2	1 ½	5	3		3	11	13	9
1	3 ¾	1	4	2	7 ½	2	2	5	4		4	0	14	0
1	4	1	4 ½	2	8	2	2 ½	5	5		4	1	14	3
1	4 ½	1	5	2	8 ½	2	3	5	6		4	2	14	6
1	5	1	5 ½	2	9	2	3 ½	5	7		4	3	14	9

N° II.

A TABLE of the aſſize and price of bread made of the ſeveral grains hereunder mentioned.

This table is divided into ſeven columns: columns the 1ſt and 7th contain the prices of the buſhel of grain, the allowance for baking included; which prices are adapted ſo as to ſerve either for the *Wincheſter* buſhel of rye, the *Wincheſter* buſhel of barley, the *Wincheſter* buſhel of oats, the *Wincheſter* buſhel of beans, the *Wincheſter* buſhel of maſlin *alias* miſcellany, conſiſting of two-thirds wheat and one-third rye; the price of either of which buſhels in the market being known, the magiſtrates are to add the intended allowance thereto; the amount of which being found either in column N° I. or VII. the weights which the ſeveral penny, twopenny, ſixpenny, and twelvepenny loaves ought to be of, will be found under columns N° II. III. IV. and V. and the price of the reſpective peck loaves (which are to weigh 17 lb. 6 oz. each) under N°. VI.

Example, when the price of the buſhel of barley in the market, with the allowance to the baker, is 4s. look for that ſum in column the 1ſt or 7th, and under their reſpective titles in the ſame line will be found the weights which the ſeveral aſſize barley loaves ſhould be of, and the price of the peck barley loaf, and ſo of each of the other ſorts.

Note, Where bread is allowed at any time to be made for ſale of peaſe only, the aſſize and price thereof are to be ſet and fixed from the bean columns; and where bread is ordered to be made for ſale of a coarſe ſort of maſlin or miſcellany grain, conſiſting of one-third rye, one third barley, and one third either peaſe or beans, the aſſize and price thereof are to be ſet and fixed from the barley columns.

Note alſo, That this table is framed for bread to be made of the whole produce of the ſaid ſeveral grains, except the bran or hull thereof only.

N° I.	N° II.					N° III.				
Price of the Buſhel, and Baking.	Weight of the Penny Loaf.					Weight of the twopenny loaf.				
	Rye	Barley.	Oats.	Beans.	Maſlin.	Rye.	Barley.	Oats.	Beans.	Maſlin.
s. d.	oz. d	oz. d.	oz. d	oz. d.	oz. d.	lb. oz. d.	lb. oz. d.	lb. oz. d	lb. oz. d.	lb. oz. d.
1 0	62 8	67 8	31 4	83 12	70 0	7 13 0	8 7 0	3 14 8	10 7 8	8 12 0
1 3	50 0	54 0	25 0	67 0	56 0	6 4 0	6 12 0	3 2 0	8 6 0	7 0 0
1 6	41 10	45 0	20 14	55 12	46 10	5 3 5	5 10 0	2 9 12	6 15 8	5 13 4
1 9	35 11	38 9	17 14	47 14	40 0	4 7 6	4 13 2	2 3 12	5 15 12	5 0 0
2 0	31 4	33 12	15 10	41 14	35 0	3 14 8	4 3 8	1 15 4	5 3 12	4 6 0
2 3	27 13	30 0	13 14	37 4	31 2	3 7 10	3 12 0	1 11 12	4 10 8	3 14 4
2 6	25 0	27 0	12 8	33 8	28 0	3 2 0	3 6 0	1 9 0	4 3 0	3 8 0
2 9	22 11	24 9	11 6	30 7	25 6	2 13 6	3 1 2	1 6 12	3 12 14	3 2 12
3 0	20 13	22 8	10 7	27 14	23 5	2 9 10	2 13 0	1 4 14	3 7 12	2 14 10
3 3	19 4	20 12	9 10	25 12	21 8	2 6 8	2 9 8	1 3 4	3 3 8	2 11 0
3 6	17 13	19 4	8 15	23 15	20 0	2 3 11	2 6 8	1 1 14	2 15 14	2 8 0
3 9	16 11	18 0	8 5	22 5	18 10	2 1 6	2 4 0	1 0 11	2 12 10	2 5 4
4 0	15 10	16 14	7 13	20 15	17 8	1 15 4	2 1 12	0 15 10	2 9 14	2 3 0
4 3	14 12	15 14	7 6	19 11	16 8	1 13 8	1 15 13	0 14 12	2 7 6	2 1 0
4 6	13 14	15 0	6 15	18 10	15 9	1 11 13	1 14 0	0 13 14	2 5 3	1 15 2
4 9	13 2	14 4	6 9	17 11	14 12	1 10 5	1 12 9	0 13 3	2 3 6	1 13 8
5 0	12 8	13 8	6 4	16 12	14 0	1 9 0	1 11 0	0 12 8	2 1 8	1 12 0
5 3	11 14	12 14	5 15	15 15	23 5	1 7 13	1 9 13	0 11 15	1 15 14	1 10 10
5 6	11 5	12 4	5 11	13 3	12 11	1 6 11	1 8 9	0 11 6	1 14 7	1 9 6
5 9	10 13	11 12	5 7	14 9	2 2	1 5 11	1 7 8	0 10 14	1 13 2	1 8 4
6 0	10 6	11 4	5 3	13 15	11 10	1 4 13	1 6 8	0 10 7	1 11 14	1 7 5
6 3	10 0	10 13	5 0	13 6	11 3	1 4 0	1 5 10	0 10 0	1 10 12	1 6 6
6 6	9 10	10 6	4 15	12 14	10 12	1 3 4	1 4 12	0 9 10	1 9 12	1 5 8
6 9	9 4	10 0	4 10	12 6	10 6	1 2 9	1 4 0	0 9 5	1 8 13	1 4 12
7 0	8 15	9 10	4 7	11 15	10 0	1 1 13	1 3 4	0 8 15	1 7 15	1 4 0

N° IV. Weight of the Sixpenny Loaf.						N° V. Weight of the Twelvepenny Loaf.						N° VI. Price of the Peck Loaf.						N° VII. Price of the Bushel, and Baking.
Rye.	Barley.	Oats.	Beans.	Maslin.		Rye.	Barley.	Oats.	Beans.	Maslin.		Rye.	Barley.	Oats.	Beans.	Maslin.		
lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.		lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.	lb. oz. dr.		s. d.	s. d.	s. d.	s. d.	s. d.		s. d.
23 7 0	35 5 0	11 11 8	31 6 8	26 4 0		46 14 0	50 10 0	23 7 0	62 13 0	52 8 0		0 4½	0 4¼	0 9	0 3¾	0 4		1 0
18 12 0	20 4 0	9 6 0	25 2 0	21 0 0		37 8 0	40 8 0	18 12 0	50 4 0	42 0 0		0 5½	0 5½	0 11	0 4	0 5		1 1 3
15 9 15	16 14 0	7 13 4	20 14 8	17 7 12		31 3 14	33 12 0	15 10 8	41 13 0	34 15 8		0 6½	0 5½	1 1	0 5	0 6		1 3 6
13 6 2	14 7 6	6 11 4	17 15 4	15 0 0		26 12 4	28 14 12	13 6 8	35 14 8	30 0 0		0 7½	0 7¼	1 3	0 5¾	0 7		1 6 9
11 11 8	12 10 8	5 13 12	15 11 4	13 2 0		23 7 0	25 5 0	11 11 8	31 6 8	26 4 0		0 8½	0 8¼	1 5½	0 6¾	0 8		1 9 0
10 6 14	11 4 0	5 3 4	13 15 8	11 10 12		20 13 12	22 8 0	10 6 8	27 15 0	23 5 8		0 9½	0 9¼	1 7½	0 7½	0 9		2 0 3
9 0 0	10 2 0	4 11 0	12 9 0	10 8 0		18 12 0	20 4 0	9 6 0	25 2 0	21 0 0		0 10½	0 10	1 9½	0 8¼	0 10		2 3 6
8 8 2	9 3 6	4 4 4	11 6 10	9 8 4		17 0 4	18 6 12	8 8 8	23 7 0	19 0 8		0 11½	0 11½	1 11½	0 9¾	0 11		2 6 9
7 12 15	8 7 0	3 14 10	10 7 4	8 11 14		15 9 15	16 14 0	7 13 4	20 14 8	17 7 12		1 1	1 0½	2 1½	0 11	1 0		2 9 0
7 3 8	7 12 8	3 9 12	9 10 8	7 13 0		14 7 0	15 9 0	7 3 8	19 5 0	16 2 0		1 2½	1 1½	2 4½	0 11½	1 1		2 9 0
6 11 1	7 3 8	3 5 0	8 13 4	7 2 0		13 6 2	14 3 0	6 11 4	17 15 4	15 0 0		1 3½	1 2½	2 6½	1 0	1 2		2 6 9
6 4 2	6 12 0	2 16 8	8 5 14	6 15 12		12 7 4	13 8 0	6 4 2	16 11 12	13 15 8		1 5½	1 4½	2 8½	1 0½	1 3		2 3 6
5 13 12	6 5 4	2 14 14	7 13 10	6 9 0		11 11 8	12 10 8	5 13 12	15 11 4	12 6 0		1 6½	1 5½	2 10½	1 1½	1 4		2 0 3
5 8 8	5 15 7	2 12 4	7 6 2	6 3 0		11 1 0	11 14 14	5 8 8	14 12 4	12 0 0		1 8½	1 7½	3 0½	1 2½	1 5		1 9 0
5 3 7	5 10 0	2 9 10	6 15 9	5 13 6		10 6 14	11 4 0	5 3 4	13 15 2	11 10 12		1 9½	1 8½	3 2½	1 3½	1 6		1 6 9
4 14 15	5 5 11	2 7 9	6 10 2	5 8 8		10 1 14	10 11 6	4 15 2	13 4 4	11 1 0		1 10½	1 9½	3 4½	1 4½	1 7		1 3 0
4 11 0	5 1 0	2 5 8	6 4 8	5 4 0		9 13 14	10 2 0	4 11 0	12 9 0	10 8 0		1 11½	1 10½	3 6½	1 5½	1 8		1 0 0
4 7 7	4 13 7	2 3 13	5 15 10	4 15 14		8 14 14	9 10 14	4 7 10	11 5 4	9 4 14		2 0½	1 11½	3 8½	1 6½	1 9		1 0 0
4 4 1	4 6 8	2 0 10	5 11 5	4 10 12		8 1 0	8 12 10	4 4 4	10 0 6	8 1 0		2 1½	2 0½	3 10½	1 7½	1 10		1 3 0
4 1 4	4 2 2	1 18 6	5 7 0	4 5 15		7 12 2	7 13 0	3 18 6	9 4 14	7 2 8		2 2½	2 1½	4 0½	1 8½	1 11		1 6 0
3 14 7	4 3 8	1 17 3	5 3 10	4 4 0		7 3 8	7 12 8	3 17 3	8 13 4	6 15 12		2 3½	2 2½	4 1½	1 9½	2 0		1 9 0
3 12 0	4 0 14	1 16 0	4 19 2	4 0 8		6 14 0	7 3 0	3 16 0	8 2 8	6 15 0		2 4½	2 3½	4 2½	1 10½	2 1		1 0 0
3 9 12	3 14 4	1 14 12	4 13 4	3 17 4		6 4 14	6 11 14	3 5 14	7 11 10	6 3 4		2 5½	2 4½	4 3½	1 11½	2 2		1 2 6
3 7 11	3 12 0	1 11 15	4 7 6	3 10 8		5 15 12	6 3 0	3 1 12	7 0 6	5 11 12		2 6½	2 5½	4 4½	1 11½	2 3		1 5 0
3 5 8	3 9 12	1 9 8	4 1 8	3 7 0		5 7 10	5 14 8	2 18 10	6 8 4	5 0 0		2 7½	2 6½	4 5½	1 11½	2 4		1 7 6
3 3 4	3 7 4	1 7 4	3 15 6	3 3 4		5 0 8	5 6 2	2 16 4	5 17 2	4 8 8		2 8½	2 7½	4 6½	2 0½	2 5		1 8 6
Vol. I. N° XVI.						3 B												Sect.

Aſſize to be ſet in averdupoize weight, and in the proportions directed by the tables, for the ſeveral ſorts of bread.

Sect. 5. "And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September* one thouſand ſeven hundred and fifty eight, every aſſize which ſhall, from time to time, be ſet in any city, town corporate, hundred, diviſion, liberty, rape or wapentake, in purſuance of this act, ſhall be always ſet in averdupois weight, of ſixteen ounces to the pound, and not *Troy Weight*, and in the ſeveral proportions directed in or by the ſaid tables above ſet forth, or as near the ſame as may be, as to the ſeveral ſorts of bread in this act ſpecified; and that the ſaid tables ſhall extend as well to ſuch bread which ſhall be made with the flour of wheat mixed with the flour of other grain, as alſo to bread which ſhall be made with the flour of other grain or grains than wheat, which ſhall be publickly licenſed and allowed to be made into bread, in any place or places in purſuance of this act; and that the aſſize of all ſuch mixed bread ſhall be ſet and aſcertained as near as may be, according to the ſaid tables.

Return to be made weekly to the court of mayor and aldermen of London, by the meal weighers, of the prices which the ſeveral kinds of grain, meal, and flour, fit for bread, publickly ſell for in the markets of the city; the prices to be entered by them on a certain day in a book to be kept in the town clerk's office; and the aſſize and price of bread to be ſet the next day; and to take place according to order, and continue till a new aſſize be ſet;

Sect. 6. "And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September*, the reſpective prices which the ſeveral kinds of grain, meal and flour, fit and proper to make the different ſorts of bread which ſhall be allowed to be made in purſuance of this act, ſhall, from time to time, *bona fide*, ſell for in the markets or places in *London*, where ſuch grain, meal and flour ſhall be openly and publickly ſold during the whole market, and not at particular times thereof, or on particular contracts only, ſhall, from time to time, be given in and certified on oath, on ſome certain day in every week, as the court of mayor and aldermen of the city of *London* ſhall, from time to time, appoint, by the meal weighers of the ſaid city of *London*, or ſuch other perſons as the ſaid court of mayor and aldermen in *London* ſhall, from time to time, direct; and ſhall alſo on ſome certain day in every week, to be appointed by the ſaid court of mayor and aldermen in *London*, be entered by ſuch meal weighers, or other perſons to be appointed as aforeſaid, in writing under their hands, in ſome book to be for that purpoſe provided by the ſaid city of *London*, and kept at the town clerk's office in the ſaid city: And the next day, after every ſuch price ſhall be ſo given in and certified as aforeſaid, the aſſize and weight of all ſorts of bread to be ſold or expoſed to ſale by any perſon within the limits of their juriſdiction, and the price to be paid for the ſame reſpectively, ſhall, from time to time, be ſet by the ſaid court of mayor and aldermen in *London*, if the ſaid court ſhall then ſit, and if ſuch court ſhall not then ſit, by the mayor of the ſaid city for the time being; and that the aſſize of bread which ſhall be ſo ſet in *London* ſhall take place from ſuch time as the ſaid court ſhall order, and be in force for the ſaid city of *London* and the liberties thereof, and the weekly bills of mortality (the city of *Weſtminſter* and liberties thereof, the borough of *Southwark*, and weekly bills of mortality in the county of *Surry*, excepted) until a new or other aſſize of bread in *London* ſhall be ſet; and that after the fixing or ſetting of every ſuch aſſize of bread, by the ſaid court of mayor and aldermen of *London*, or the mayor of the ſaid city for the time being, when the ſaid court of mayor and aldermen of

London shall not sit, the assize so from time to time set shall, with all convenient speed, after setting thereof, be made public in such manner as the said court of mayor and aldermen shall order or direct: But before any advance or reduction shall in any week be made by the said court of mayor and aldermen, or the mayor of the said city of *London* for the time being, in the price of bread, the meal weighers of the said city of *London* for the time being, or such other persons as the said court of mayor and aldermen shall from time to time appoint to return the price of grain, meal and flour, shall leave in writing at the common hall of the company of bakers in the said city of *London*, a copy of every return of the price of grain, meal and flour, which they shall make, and enter in such book to be provided and kept at the town clerk's office as aforesaid, some time of the same day on which such meal weighers or other persons shall make every such return and entry as aforesaid; to the intent that the said company of bakers may the morning of the next day, after every such return and entry shall be made, and before any assize shall be set, from time to time, have an opportunity to offer to the said court of mayor and aldermen, if such court shall then sit, and if such court shall not then sit, to the mayor of the said city of *London* for the time being, all such objections as the said company of bakers shall have and think fit to offer against any advance or reduction being that day made in *London* in the price of bread.

and to be published forthwith. Before any advance or reduction be made in the price of bread, the meal weighers are to leave at the bakers hall a copy of the returns made that day, that the company may have time to object thereto, before the assize be set.

Sect. 7. "And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, the court of mayor and aldermen of every other city, where there shall be any such court, and when such court shall sit; and where there shall be no such court, or, there being any such, when the same shall not sit, the mayor, bailiffs, or other chief magistrate or magistrates of every such other respective city, and in towns corporate, or boroughs, the mayor, bailiffs, aldermen, or other chief magistrate or magistrates for the time being of every such town corporate or borough; or two or more justices of the peace in such towns and places where there shall be no such mayor, bailiffs, aldermen, or chief magistrates; shall and may severally and respectively, from time to time, as there shall be occasion, within their several and respective jurisdictions, cause the respective prices, which the several sorts of grain, meal and flour, fit and proper to make the different sorts of bread which shall be allowed to be made in every such other respective city, town corporate, borough, town, or place, shall, from time to time, *bona fide*, sell for, in the respective publick markets in or near to every such other town corporate, borough, town, or place, during the whole market, and not at particular times thereof, or on particular contracts only, from time to time be given in and certified, upon oath, unto such court, mayor, bailiffs, aldermen, chief magistrate or magistrates, or justices, as aforesaid respectively, within their several jurisdictions, in such manner, and by such person or persons, and on such day in every week, as any such respective court, mayor, bailiffs, aldermen, chief magistrate or magistrates, or justices, as aforesaid, within their respective jurisdictions, shall from time

The court of mayor and aldermen, and magistrates, &c. in other cities, towns, and boroughs, may, in like manner, cause returns to be made them of the prices which the several sorts of grain, meal and flour, fit for bread, shall be publickly sold at in the markets within their jurisdictions;

the prices to be entered and certified in a proper book; and the aſſize and price of bread to be ſet within 2 days after;

to time appoint; and the price which ſhall be ſo certified ſhall, from time to time, be entered by the reſpective perſon or perſons who ſhall certify the ſame in ſome book or books to be provided by ſuch reſpective perſon or perſons, and kept by him or them for that purpoſe: And within two days after every ſuch price ſhall be ſo returned, the aſſize and weight of bread for every ſuch other reſpective city, town corporate, borough, town, and place, and the price to be paid for the ſame, ſhall, from time to time, be ſet by the court of mayor and aldermen of every ſuch other city where there ſhall be any ſuch court, and when the ſame ſhall ſit; and when ſuch court ſhall not ſit, by the mayor of every ſuch other reſpective city; and where there ſhall be no ſuch court of mayor and aldermen in any ſuch other city, then by the mayor, bailiffs, or other chief magiſtrate or magiſtrates of every ſuch other city; and in towns corporate, and boroughs, by the mayor, bailiffs, aldermen, or other chief magiſtrate or magiſtrates of every ſuch town corporate, or borough; and by two or more juſtices of the peace in towns or places where there ſhall be no ſuch mayor, bailiffs, aldermen, or chief magiſtrate or magiſtrates: And the aſſize and weight of bread, and price to be paid for the ſame, which ſhall be ſo from time to time ſet in every ſuch other city, and in every town corporate, or borough, and in every town and place where there ſhall be no ſuch mayor, bailiffs, aldermen, or chief magiſtrate or magiſtrates, as aforeſaid, ſhall commence and take place on ſuch day in every week, and be in force for ſuch time, not exceeding ſeven days from the ſetting of every ſuch aſſize, and ſhall be made publick in ſuch manner, as ſuch court of mayor and aldermen in every ſuch other city where there ſhall be any ſuch court, and when the ſame ſhall ſit; and where there ſhall be no ſuch court of mayor and aldermen, or there being any ſuch, when the ſame ſhall not ſit, as the mayor, bailiffs, or other chief magiſtrate or magiſtrates, as aforeſaid, of every ſuch other city; and as the mayor, bailiffs, aldermen, or other chief magiſtrate or magiſtrates, as aforeſaid, of every ſuch town corporate, or borough; and in towns and places where there ſhall be no ſuch mayor, bailiffs, aldermen, or chief magiſtrate or magiſtrates, as aforeſaid, as any two juſtices, as aforeſaid, ſhall, within their reſpective juriſdictions, from time to time direct.

and to take place, and continue (not exceeding 7 days) and to be publiſhed, as the court or magiſtrates ſhall direct.

Two or more juſtices within their juriſdictions, may ſet an aſſize of bread, and cauſe returns to be made by the clerks of the neighbouring markets of the price at which grain, meal and flour ſhall be there ſold;

Sect. 8. "And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September*, if any two or more juſtices of the peace of counties at large, ridings or diviſions, ſhall at any time think fit to ſet an aſſize of bread, for any place or places within the limits of their reſpective juriſdictions, then, and in any ſuch caſe, it ſhall be lawful for any ſuch two or more juſtices, within the limits of their reſpective juriſdictions, to cauſe the price, which grain, meal and flour, fit to make the ſeveral ſorts of bread which ſhall be made for ſale in any ſuch place or places, ſhall, from time to time, *bona fide*, ſell for in the reſpective public corn market or corn markets, in or near any ſuch place or places reſpectively, during the whole market, and not at particular times thereof, or on ſpecial contracts only, to be from time to time given, and certified on oath, to them at their reſpective houſes or places

of

of abode, in any ſuch county, riding, or diviſion, on ſuch day in every week, as any ſuch two or more juſtices ſhall for that purpoſe fix on and appoint, by the reſpective clerks of the market of the ſeveral markets in or near ſuch reſpective place or places, or ſuch other perſon or perſons as any ſuch two or more juſtices as aforeſaid reſpectively, within their reſpective juriſdictions, ſhall for that purpoſe appoint; and that the price of grain, meal and flour, which ſhall be ſo returned, ſhall, from time to time, be entered, by the reſpective perſon or perſons who ſhall ſo return the ſame, in ſome book or books to be provided by him or them, and kept for that purpoſe; and within two days after any ſuch return of the price of grain, meal and flour, ſhall be made to any ſuch two or more juſtices, as aforeſaid, the price and aſſize of bread may be by them, or any two of them, ſet for every ſuch place or places, for any time not exceeding fourteen days from every ſetting thereof: And the aſſize which ſhall be ſo from time to time ſet, ſhall commence and be in force, at ſuch time after every ſetting thereof, and be made public in ſuch place or places for which the ſame ſhall be ſo ſet, in ſuch manner as the juſtices who ſhall ſet the ſame, ſhall order or direct.

the returns to be made on a certain day,

and to be entered and ſigned in a book to be kept for that purpoſe; the aſſize and price of bread to be ſet within 2 days after, and to continue (not exceeding 14 days) and to commence and be publiſhed as ſhall be ordered.

Sect. 9. "And be it further enacted by the authority aforeſaid, That any maker of bread for ſale in any ſuch other city, town corporate, borough, or place, where the price and aſſize of bread, in purſuance of this act, ſhall at any time be thought proper to be ſet, ſhall have liberty, at all ſeaſonable times, in the day time, the next day after every return of the price of grain, meal and flour, ſhall be made for any ſuch other city, town corporate, borough, town, or place, and entered in the proper book hereby directed to be provided and kept for that purpoſe, to ſee the entry which ſhall be made in ſuch book, of the price of grain, meal and flour, without paying any thing for the ſame; to the intent that every ſuch maker of bread for ſale may have an opportunity, on the ſaid next day after any ſuch entry as aforeſaid ſhall be made as hereby is directed, to offer to any ſuch court, mayor, bailiffs, aldermen or other chief magiſtrate or magiſtrates, or juſtices, as aforeſaid, who ſhall think fit to ſet any ſuch aſſize of bread within their reſpective juriſdictions, and before any ſuch aſſize ſhall be ſet, ſuch objections as any ſuch maker of bread for ſale can reaſonably make againſt any advance or reduction being at any time made in the aſſize or price of bread in any ſuch other city, town corporate, borough, town or place.

Bakers may ſee the returns, the day after the ſame ſhall be made, that they may have time to object to the advance or reduction to be made in the price of bread, before the aſſize be ſet.

Sect. 10. "And be it further enacted by the authority aforeſaid, That no baker or maker of bread for ſale ſhall be liable or compellable to pay any fee, gratuity, or reward, to any perſon or perſons for, or by means of, any aſſize of bread being at any time ſet, altered, or publiſhed, by virtue of or under this act.

Baker not liable to pay fees on account of the aſſize of bread.

Sect. 11. "And be it further enacted by the authority aforeſaid, That the form of the return, or the certificate of the price of grain, meal or flour, ſhall, from time to time, be to the purport or effect as followeth; that is to ſay,

Form of the returns to be made of the price of grain, meal or flour.

The

The prices of grain, meal and flour, as ſold in the corn market in in the of the day of 17

The beſt wheat	at	by the buſhel.
The ſecond	at	by ditto.
The third	at	by ditto.
The beſt wheaten flour	at	by the ſack.
Houſehold flour	at	by ditto.
Rye	at	by the buſhel.
Rye meal, or flour,	at	by the buſhel.
Barley	at	by ditto.
Barley meal	at	by ditto.
Oats	at	by ditto.
Oatmeal	at	by
White peas	at	by the buſhel.
White pea flour, or meal,	at	by
Beans	at	by the buſhel.
Bean meal, or flour,	at	by

Returns to be ſigned. To every of which returns the perſon or perſons, who ſhall be appointed to make the ſame, ſhall, from time to time, ſign their reſpective names or marks.

Form of publication of the aſſize of bread. *Sect.* 12. " And be it further enacted by the authority aforeſaid, That when an aſſize of bread ſhall at any time be ſet in purſuance of this act, the ſame ſhall be made public in the form or to the effect following; that is to ſay,

To wit, The aſſize of bread, ſet the day of for to take place on the day of now next enſuing, and to be in force for the ſaid of

And in places where penny, twopenny, ſixpenny, twelvepenny, and eighteenpenny loaves, ſhall be made, as followeth;

	lb.	oz.	dr.
The penny loaf wheaten is to weigh			
Ditto houſehold is to weigh			
The twopenny loaf wheaten is to weigh			
Ditto houſehold is to weigh			
The ſixpenny loaf wheaten is to weigh			
Ditto houſehold is to weigh			
The twelvepenny loaf wheaten is to weigh			
Ditto houſehold is to weigh			

The

	lb.	oz.	dr.
The eighteen penny loaf wheaten is to weigh —— ——			
Ditto houſehold is to weigh —— —— —— ——			

And in places where quartern, half peck and peck loaves, ſhall be made, then as follows;

	lb.	oz.	dr.		s.	d.
The peck loaf wheaten is to weigh				and is to be ſold for		
Ditto houſehold is to weigh ——				and is to be ſold for		

And the half peck and quarter of a peck loaves of wheaten and houſehold bread are to weigh, from time to time, in proportion to the weight a peck loaf of wheaten or houſehold bread ought to weigh, and are to be ſold according to the price a peck loaf of wheaten or houſehold bread reſpectively is to be ſold; and whenever any bread ſhall be ordered to be made by any ſuch magiſtrate or magiſtrates, or juſtices, within the limits of their juriſdiction, with the meal or flour of rye, barley, oats, peas or beans, either alone, or mixed with the meal or flour of any other grain or grains, the aſſize of ſuch bread ſhall be made public in ſuch manner as the ſaid magiſtrate or magiſtrates, or juſtices, who ſhall ſet ſuch aſſize, ſhall, from time to time, direct.

Half peck, and quartern loaves, to weigh, and be ſold, in due proportion to the peck loaf. Magiſtrate to direct how the aſſize of rye, barley, or mixed bread, when ordered to be made, ſhall be publiſhed.

Sect. 13. "And be it alſo enacted by the authority aforeſaid, That in places where any ſixpenny, twelvepenny, and eighteenpenny loaves ſhall at any time be ordered or allowed to be made or ſold, no peck, half-peck, or quarter of a peck loaves, ſhall be permitted or allowed at the ſame time to be there made or ſold; to the intent that one of thoſe ſorts of loaves of bread may not be ſold deſignedly, or otherwiſe, for the other ſort thereof, to the injury of unwary people; upon pain that every one who ſhall offend in the premiſſes, and ſhall be thereof convicted in manner herein after preſcribed, ſhall, for every ſuch offence, forfeit a ſum not exceeding forty ſhillings, nor leſs than twenty ſhillings, as the magiſtrate or magiſtrates, juſtice or juſtices, before whom any ſuch offender ſhall be convicted, ſhall from time to time think fit.

Where bread of a certain denomination and value ſhall be ordered, or allowed to be made, no bread of a different denomination is to be ſold at the ſame time, under penalty of forfeiting not exceeding 40s. nor leſs than 20s. for ſuch offence.

Sect. 14. "And be it further enacted by the authority aforeſaid, That if, for the better carrying into execution this act, the juſtices of the peace of any county, riding or diviſion, ſhall, at any general or general quarter ſeſſions of the peace to be held by them for any ſuch county, riding, or diviſion, think fit to aſcertain or fix, that any hundred or hundreds, or other place or places, in any ſuch county, riding or diviſion, ought to be eſtimated or conſidered, as of or in any one particular hundred, riding

The juſtices, at a general or quarter ſeſſions, may fix the juriſdiction of any hundred or place within a certain diſtrict, ſo as the

assize of bread set for the same may extend thereto.

ding or division, of any such county, riding or division, in order that the assize of bread which shall be set for such particular hundred, place or places, may extend to or comprize such other hundred, place or places, then, and in any such case, it shall be lawful for them so to do; but by so doing thereof, no justice of the peace of any such county, riding or division, shall be excluded or debarred from acting as a justice of the peace in any hundred, riding or division, of any such county, in which any such particular towns, districts or places shall lie, or the assize for them shall be set.

Entry to be made by every clerk of the market, &c. in proper books, of the returns made by him, and of the rate the assize and price of bread shall be set at from time to time; the said books to be open to the inspection of any inhabitant.

Sect. 15. "And be it likewise enacted by the authority aforesaid, That an entry shall, from time to time, be made by every clerk of the market, or other person or persons, who, in pursuance of this act, shall be appointed to make such return and certificate as hereby is directed respectively, in some book or books to be provided and kept by them respectively for that purpose, of every return which shall be made, in pursuance of this act, by them respectively; and also of the rate at which the price, assize and weight of bread shall, from time to time, be set or fixed within the jurisdiction of every such clerk of the market, or other persons who shall, in pursuance of this act, be appointed to make such return or certificate as aforesaid; which book or books any inhabitant of every such city, town corporate, borough, franchise, hundred, riding, division, liberty, lath, rape or wapentake, shall, at all seasonable times in the day-time, have liberty to see and inspect, without any fee or reward being to be paid for the same.

No alteration is to be made in assize of bread, unless the price of wheat, or other grain, shall vary 3 d. in the bushel from the last return.

Sect. 16. "And be it also enacted by the authority aforesaid, That after an assize of bread shall, at any time after the said twenty-ninth day of *September*, be set, no alteration shall be made therein in any subsequent week, either to rise the same higher, or to sink the same lower, unless and except when the price of wheat, or other grain, shall be returned as having rose three pence each bushel more than the last return made, or having fallen three pence each bushel lower than the said last return; no provision being made by the said assize tables for altering any assize, when the variation in the price of wheat, or other grain, shall not in any week have amounted to, and have been returned three pence a bushel.

Any meal weigher, clerk of the market, &c. who shall neglect his duty, or make a false return; and any peace officer, who shall disobey the warrant of any magistrate, or justice, or otherwise neglect his duty,

Sect. 17. "And be it likewise enacted by the authority aforesaid, That if any meal weigher, clerk of any market, or other person or persons, who shall be appointed to certify or return, as hereby is directed, the price of grain, meal and flour, shall in any wise neglect, omit or refuse to do any matters or things by this act required or directed to be done by him or them respectively, or shall designedly or knowingly make any false certificate or return; or if any constable, headborough or other peace officer, shall refuse or neglect to observe or obey any warrant in writing, which shall be delivered to him under the hand and seal of any magistrate or justice of the peace, or to do any other act requisite to be done by him or them for the carrying this act, or any of the powers or authorities hereby given, into execution; then every person so offending in any of the premisses, on being convicted of any such offence, shall forfeit and pay

for

for every such offence, any sum not exceeding five pounds, nor less than twenty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order, every time he or they shall so offend and be convicted, as hereby is directed. forfeit not exceeding 5 l. nor less than 20 s.

Sect. 18. "And be it further enacted by the authority aforesaid, That in case any buyers or sellers of, or dealers in corn, grain, meal or flour, at any time after the said twenty-ninth day of *September*, on reasonable request to him, her or them made by the meal weighers of the city of *London* in *London*, or by the respective clerks of the markets, or other persons, who, in pursuance of this act, shall be appointed to give in and certify, as hereby is directed, the prices of grain, meal and flour, from the respective markets or places within their respective jurisdictions, shall refuse to disclose and make known to such meal weighers, clerks of the markets, or other persons, who shall be appointed to make such returns and certificates as hereby are directed respectively, and also shall request the same within their respective jurisdictions, the true real prices the several sorts of grain, meal and flour, shall be *bona fide* bought at, or sold, by or for him, her, or them respectively, at any corn market or corn markets, or other place, where corn, grain, meal or flour, is or shall be usually, openly or publickly sold, within the jurisdiction of any such person or persons as aforesaid, who shall request any such account to be given to him or them; or shall knowingly give in to any such meal weigher, clerk of the market, or other person, who shall be appointed in pursuance of this act to give in and certify the price of grain, meal and flour, any false or untrue price or prices of any grain, meal or flour, bought or sold, or agreed so to be, or any price which hath been made by any deceitful means; then, and in every such case, he, she or they so offending, on being convicted of any such offence by the oath of one or more credible witness or witnesses, or solemn affirmation of any credible witness or witnesses, being a *quaker*, or on the confession of the party accused, shall forfeit any sum not exceeding ten pounds, nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order, every time he, she or they shall so offend, and be convicted of any such offence. Any buyer, seller, or dealer, who shall refuse to disclose to the meal weighers in London, or clerks of the markets, &c. in other places, the true prices the several sorts of grain, meal and flour, shall be bought or sold at in the public market, or shall give in a false or colluſive price, forfeit not exceeding 10 l. nor less than 40 s.

Sect. 19. "And be it further enacted by the authority aforesaid, That if any such court, magistrate or magistrates, justice or justices, as aforesaid, who shall have thought proper to have ordered any return to be made of the price of grain, meal, or flour, within their respective jurisdictions, shall, at any time within the space of three days after any such return shall have been made, suspect that the same was not truly and *bona fide* made, then, and in any such case, it shall be lawful for any such court, magistrate or magistrates, justice or justices, within their respective jurisdictions, to summon before them respectively any person or persons who shall have bought or sold, or shall be suspected to have bought or sold, or agreed to buy or sell, any grain, meal or flour, within their respective jurisdictions, or who shall be thought to be likely to give any informa- Where any false return shall be suspected to be made, the court, magistrate, or justice, may, within 3 days, summon any buyer or seller, or other person likely to give information,

and examine them upon oath, touching the prices of grain, meal and flour, within 7 days before; and any perſon who ſhall not appear thereto, without juſt cauſe ſhewn, or ſhall refuſe to give evidence,

information concerning the premiſſes, and to examine them reſpectively upon their ſeveral oaths touching the rates and prices the ſeveral ſorts of grain, meal and flour, or any of them, were there really and *bona fide* bought at, or ſold for, or agreed ſo to be, by him, her or them, reſpectively, at any time or times within the ſpace of ſeven days preceding the ſummoning of him, her or them, reſpectively: And if any perſon or perſons, who ſhall be ſo ſummoned as aforeſaid, ſhall neglect or refuſe to appear on ſuch ſummons (and proof ſhall be made on oath of ſuch ſummons having been duly ſerved upon him, her or them, for that purpoſe) or if any perſon or perſons ſo ſummoned ſhall appear, and neglect or refuſe to anſwer ſuch lawful queſtions touching the premiſſes, as ſhall be propoſed to him, her or them, by any ſuch court, magiſtrate or magiſtrates, juſtice or juſtices, as aforeſaid, within their reſpective juriſdictions, without ſome juſt or reaſonable excuſe, to be allowed of by any ſuch court, magiſtrate or magiſtrates, juſtice or juſtices, as aforeſaid, he, ſhe or they, ſo offending, on being convicted of any ſuch offence, either by the oath of one or more credible witneſs or witneſſes, or his, her or their own confeſſion, before any ſuch court, magiſtrate or magiſtrates, juſtice or juſtices, ſhall, on every ſuch conviction, forfeit and pay any ſum not exceeding ten pounds, and not leſs than forty ſhillings, as any ſuch court, magiſtrate or magiſtrates, juſtice or juſtices ſhall think fit and order: And if any perſon, who ſhall be ſo examined on oath, ſhall wilfully forſwear him or herſelf, every ſuch perſon ſhall be ſubject and liable to be proſecuted as for perjury, by indictment or information by due courſe at law; and, if convicted, ſhall be liable to the penalties perſons convicted of wilful and corrupt perjury are ſubject and liable to; provided that the party or parties ſo ſummoned be not obliged to travel above five miles from the place or places of his, her or their abode.

forfeits not exceeding 10l. nor leſs than 40 s. and forſwearing himſelf, incurs the penalties of perjury.

Party ſummoned, not obliged to travel above 5 miles from the place of his abode.

When an order ſhall be made for making bread for ſale of any other grain than wheat, or of mixed meal or flour; Bakers to conform to ſuch order, and make the bread of ſuch weight and goodneſs, and

Sect. 20. "And be it further enacted by the authority aforeſaid, That whenever any court as aforeſaid, magiſtrate or magiſtrates, or juſtices of the peace, ſhall order any bread to be made within their reſpective juriſdictions, of or with the flour or meal of any other grain or grains than wheat, or to be mixt with the flour of wheat, or to be made with the flour or meal of any other ſort or ſorts of grain or grains, either ſeparate or mixed together, all perſons who ſhall make any bread for ſale, in any place where any ſuch order or orders ſhall at any time be made, ſhall, from time to time, make bread with ſuch mixed meal or flour, in every ſuch place and places, in ſuch manner as they ſhall be required and ordered by any ſuch court, magiſtrate or magiſtrates, or juſtices, as aforeſaid, within their reſpective juriſdictions, and ſhall, from time to time, make the ſame of ſuch weight and goodneſs, and ſhall ſell the ſame at ſuch prices, as any ſuch court, magiſtrate or magiſtrates, or juſtices, within their reſpective juriſdictions, ſhall from time to time order or direct; upon pain that every perſon who ſhall at any time offend in the premiſſes, and ſhall be convicted of any ſuch offence in the manner herein after preſcribed by this act, ſhall forfeit any ſum not exceeding five pounds, nor leſs than forty ſhillings, as the magiſtrate or magiſtrates before whom any ſuch offender or offenders ſhall be

be convicted shall think fit and order, every time he, she or they shall so offend and be convicted."

at such price, as shall therein be directed, on penalty of forfeiting not exceeding 5 l. nor less than 40 s.

Sect. 21. "And be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June* one thousand seven hundred and fifty-eight, the several sorts of bread which shall be made for sale, or sold, or exposed to or for sale, in any place or places, shall always be well made, and in their several and respective degrees, according to the goodness of the several sorts of meal or flour whereof the same ought to be made; and that no allum, or preparation or mixture in which allum shall be an ingredient, or any other mixture or ingredient whatsoever (except only the genuine meal or flour which ought to be put therein, and common salt, pure water, eggs, milk, yeast and barm, or such leaven as shall at any time be allowed to be put therein by the court, or person or persons who shall, by virtue of this act, have set an assize of bread, for the place or places where any such leaven shall be used, and where no such assize shall have been set, then such leaven as any magistrate or magistrates, justice or justices of the peace, within his or their jurisdiction, shall allow to be used in making of bread) shall be put into, or in any wise used in making dough, or any bread to be sold, or as or for leaven to ferment any dough, or on any other account, in the trade or mystery of making bread, under any colour or pretence whatsoever, upon pain that every person (other than a servant or journeyman) who shall knowingly offend in the premisses, and shall be convicted of any such offence, either by his, her or their own confession, or by the oath of one or more credible witness or witnesses, before any such magistrate or magistrates, justice or justices of the peace, within the limits of his or their jurisdiction, shall, on every such conviction, forfeit and pay any sum of money not exceeding ten pounds, and not less than forty shillings; or shall, by warrant under the hand and seal, or hands and seals, of any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, be apprehended and committed to the house of correction, or some prison of the county, city, town corporate, borough, riding, division, or place, where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain and be kept to hard labour for any time not exceeding one calendar month, nor less than ten days, from the time of such commitment, as any such magistrate or magistrates, justice or justices, shall think fit and order; and if any servant or journeyman baker shall knowingly offend in the premisses, and shall be convicted of any such offence, either by his, her or their own confession, or by the oath of one or more credible witness or witnesses, before any such magistrate or magistrates, justice or justices of the peace within the limits of his or their jurisdiction, he, she or they, who shall so offend, shall, on every such conviction, forfeit and pay any sum of money not exceeding five pounds, and not less than twenty shillings; or shall, by warrant under the hand and seal, or hands and seals, of any such magistrate or magistrates, justice or justices, within his or their respective jurisdiction, be apprehended and committed to the

The several sorts of bread made for sale, are to be always well made, and, in their degrees, according to the goodness of the sorts of meal or flour the same ought to be made of, without any adulteration or mixture except the genuine meal or flour, salt, water, eggs, milk, yeast, and barm, or such leaven as shall be occasionally allowed; upon penalty of the offender forfeiting (not being the servant or journeyman) not exceeding 10 l. nor less than 40 s. or being committed, and kept to hard labour for any time not exceeding 1 month, nor less than 10 days; and if the offender be a servant or journeyman, on penalty of his forfeiting not exceeding 5 l. nor less than 20 s. or being committed, and kept to hard labour for any

time not exceeding 1 month, nor less than 10 days; and the magistrate may, out of the money of the forfeiture, publish in some newspaper the offender's name, place of abode, and offence.

the house of correction, or some prison of the county, city, town corporate borough, riding, division, liberty or place, where the offence shall have been committed, or the offender or offenders shall be apprehended, there to remain and be kept to hard labour for any time not exceeding one calendar month, nor less than ten days, from the time of every such commitment, as any such magistrate or magistrates, justice or justices, shall think fit and order; and it shall and may be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, out of the money forfeited, when recovered, to cause the offender's name, place of abode, and offence, to be published in some news paper, which shall be printed or published in or near the county, city or place, where any such offence shall have been committed."

The penalty of adulterating corn, meal, or flour, whether at the time of grinding, dressing, bolting, &c. or of selling the meal or flour of one sort of grain for another sort; or any thing mixed, which shall not be of the genuine meal or flour of the grain the same is sold for; is not to exceed 5l. nor be less than 40s.

Sect. 22. "And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, no person shall knowingly put into any corn, meal or flour, which shall be ground, dressed, bolted, or manufactured for sale, either at the time of grinding, dressing, bolting, or in any wise manufacturing the same, or at any other time or times, any ingredient, mixture, or thing whatsoever; or shall knowingly sell, offer or expose to or for sale, any meal or flour of one sort of grain as or for the meal or flour of any other sort of grain, or any thing as or for, or mixed with, the meal or flour of any grain, which shall not be the real and genuine meal or flour of the grain the same shall import to be, and ought to be, upon pain that every person who shall offend in the premisses, and shall be thereof convicted in manner herein after prescribed, shall forfeit and pay, for every such offence, any sum not exceeding five pounds, nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit or order."

Where bread shall be of a different mixture of corn than what it importeth to be of, or is allowed, or where the proportion of the mixture allowed of shall not be duly observed, or where any thing shall be sold as flour, which is not genuine, the offender is to forfeit not exceeding 5l. nor less than 20s.

Sect. 23. And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, no person shall knowingly put into any bread, which shall be made for sale, any mixture of meal or flour of any other sort of grain than of the grain the same shall import to be, and shall be allowed to be made of, in pursuance of this act; or shall put into any bread which shall be made for sale, any larger or other proportion of any other or different sort or sorts of grain, or the meal or flour thereof, than what shall be appointed or allowed to be put therein by this act; or any mixture or thing as for or in lieu of flour which shall not really be the genuine flour the same shall import to be, and ought to be; upon pain that every person who shall offend in the premisses, and shall be convicted of any such offence in manner herein after prescribed, shall forfeit and pay any sum not exceeding five pounds, nor less than twenty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order, every time he, she or they shall so offend, and be convicted."

Sect.

Sect. 24. " And be it further enacted by the authority aforesaid, That if any person or persons who shall make any bread for sale, or who send out, or sell, or expose to or for sale, any bread, shall at any time from and after the said twenty-ninth day of *September*, make, send out, sell or expose to or for sale, any bread which shall be deficient in weight, according to the assize which shall be set for any such bread from time to time to be sold at, in pursuance of this act, he, or they so offending in the premisses, and being thereof convicted, in manner herein after prescribed, of any such offence, shall forfeit and pay a sum not exceeding five shillings, nor less than one shilling, for every ounce of bread which shall at any time be wanting or deficient in the weight every such loaf ought to be of; and for every loaf of bread which shall be found wanting less than an ounce of the weight the same ought to be of, a sum not exceeding two shillings and six pence, nor less than six pence; as any such magistrate or magistrates, justice or justices, before whom any such bread which shall not be of the due weight the same ought to be, shall be brought, shall think fit to order; so as such bread which shall be complained of as wanting at any time in the weight the same ought to be of, in any city, town corporate, borough, liberty, or franchise, or the jurisdiction thereof, or within the weekly bills of mortality, shall from time to time be brought before some magistrate or magistrates, justice or justices, having jurisdiction in the premisses, and shall be weighed before such magistrate or magistrates, justice or justices, within twenty-four hours after the same shall have been baked, sold or exposed to or for sale; and so as such bread which shall be complained of as wanting at any time in the weight the same ought to be of, in any hundred, riding, division, liberty, rape, wapentake or place, shall from time to time be brought before some justice or justices of the peace of such hundred, riding, division, liberty, rape or wapentake, or other place, and shall be weighed before such justice or justices within three days after the same shall have been baked, sold, or exposed to or for sale; unless it shall be made out to the satisfaction of any such magistrate or magistrates, justice or justices, by or on the behalf of the party or parties against whom any such complaint or information shall be made, that such deficiency in weight wholly arose from some unavoidable accident in baking, or otherwise, or was occasioned by or through some contrivance or confederacy.

Where bread shall be made under weight,

the offender forfeits not exceeding 5s. nor less than 1s. for every oz. deficient; and if under an oz. not exceeding 2s. 6d nor less than 6d.

provided such bread complained of, if in any city, town corporate, or borough,

be weighed before the magistrate, within 24 hours after the same shall be baked, sold, or exposed to sale; and if in any hundred, riding, or division, &c.

within 3 days of the baking, or sale thereof;

unless such deficiency arose from some unavoidable accident, or by contrivance or confederacy.

Sect. 25. " And be it further enacted by the authority aforesaid, That from and after the said twenty-ninth day of *September*, every person who shall make for sale, or sell, expose or send out, to or for sale, any sort of bread whatsoever, shall, from time to time, cause to be fairly imprinted or marked on every loaf of each respective sort of bread which he, she or they shall make or sell, or carry out, or expose to or for sale, the *Roman* letters herein after mentioned; that is to say, Upon every loaf of bread which shall be made, sold, carried out, or exposed to or for sale, as wheaten bread, a large *Roman* W; and upon every loaf of bread which shall

All bread made for sale, is to be fairly marked;

the wheaten bread with a large Roman W, and household with H,

ſhall be made, ſold, carried out, or expoſed to or for ſale, as houſehold or brown bread, a large *Roman* H; and that every perſon who ſhall make for ſale, or ſhall ſell, carry out, or expoſe to or for ſale, any loaf of any ſort of bread, which ſhall be allowed to be made in purſuance of this act, which ſhall not be marked purſuant to the directions of this act, ſo as the ſame may, on the view thereof, be aſcertained, from time to time, under what denomination or ſort of bread every ſuch loaf was made, and ought to be weighed (except as to ſuch loaves which ſhall be raſped after the beſpeaking or purchaſing thereof, by the particular deſire of any perſon who ſhall order the ſame to be ſo raſped, for his, her or their own uſe or uſes) ſhall, for every time he, ſhe or they ſhall offend in the premiſſes, and be thereof convicted in manner herein after preſcribed, forfeit and pay a ſum not exceeding twenty ſhillings, nor leſs than five ſhillings, as any magiſtrate or magiſtrates, juſtice or juſtices, before whom the offender ſhall be convicted, ſhall direct, for every loaf of bread not marked as hereby is directed.

in order to aſcertain under what denomination it was made, and ought to be weighed; under penalty not exceeding 20 s. nor leſs than 5 s.

Sect. 26. " And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September*, no baker, or other perſon or perſons, ſhall aſk, demand or take, for any bread which he, ſhe or they ſhall ſell, or expoſe to or for ſale, any greater or higher price than ſuch bread ſhall be aſcertained to be ſold for or at by the court, magiſtrate or magiſtrates, or juſtices, hereby authorized to ſet the price and aſſize of bread, within their reſpective juriſdictions; and that no baker, or other perſon who ſhall make any bread for ſale, ſhall refuſe or decline to ſell any loaf or loaves of any of the ſorts of bread, which in purſuance of this act ſhall be allowed or ordered to be made, to any perſon or perſons who ſhall tender ready money in payment for the ſame, at or for the price ſuch bread, by the aſſize which ſhall have been ſet in reſpect thereof, ſhall be fixed at, or aſcertained to be ſold for, when any ſuch baker, or other perſon who ſhall make bread for ſale, ſhall have any loaf of any ſuch bread in his or their houſe, bakehouſe, ſhop, or poſſeſſion, to be ſold, more than ſhall be requiſite for the immediate neceſſary uſe of his, her or their own family, or cuſtomers; and which it ſhall be incumbent on ſuch baker, or other perſon who ſhall be complained of, for refuſing or declining to ſell any ſuch bread, to prove before the magiſtrate or magiſtrates, juſtice or juſtices, to whom any ſuch complaint ſhall be made, if thereunto required by the party or parties who ſhall make any ſuch complaint; upon pain that every perſon who ſhall be convicted of any ſuch offence, in manner herein after preſcribed, ſhall forfeit and pay a ſum not exceeding forty ſhillings, nor leſs than ten ſhillings, as the magiſtrate or magiſtrates, juſtice or juſtices, before whom any ſuch offender or offenders ſhall be convicted, ſhall think fit and order, every time he, ſhe or they ſhall ſo offend and be convicted.

Bakers demanding or taking a higher price for bread, than what the ſame ſhall be ſet at by the aſſize; or refuſing to ſell to any perſon any of the ſorts allowed or ordered to be made, when he ſhall have more than is neceſſary for the immediate uſe of his family or cuſtomers,

forfeits not exceeding 40 s. nor leſs than 10 s.

Sect. 27. " Provided further, and it is hereby likewiſe enacted, That from and after the ſaid twenty-ninth day of *September*, no perſon ſhall ſell, or offer to ſale, any bread of an inferior quality to wheaten bread, at a higher price than houſehold bread ſhall be ſet at by the aſſize; and if any perſon

Bread of any inferior quality to wheaten, is not to be ſold at a

perſon ſhall offend in the premiſſes, he ſhall forfeit and pay for every ſuch offence, on being convicted thereof, either by his, her, or their confeſſion, or by the oath of one or more credible witneſs or witneſſes, before any magiſtrate or magiſtrates, juſtice or juſtices, within whoſe juriſdiction any ſuch offence ſhall have been committed, the ſum of twenty ſhillings.

higher price than houſehold bread is ſet at, on penalty of 20s.

Sect. 28. " And, that the good deſign of this ſtatute may be the more effectually accompliſhed, be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September*, it ſhall be lawful for any magiſtrate or magiſtrates, juſtice or juſtices of the peace, within the limits of their reſpective juriſdictions, and alſo for any peace officer or officers, authorized by warrant under the hand and ſeal, or hands and ſeals, of any ſuch magiſtrate or magiſtrates, juſtice or juſtices (and which warrant any ſuch magiſtrate or magiſtrates, juſtice or juſtices, is and are hereby impowered to grant) at ſeaſonable times in the day time, to enter into any houſe, ſhop, ſtall, bakehouſe, warehouſe or outhouſe of or belonging to any baker, or ſeller of bread, to ſearch for, view, weigh and try all or any the bread, which ſhall be there found: And if any bread, on any ſuch ſearch, ſhall be found to be wanting either in the goodneſs of the ſtuff whereof the ſame ſhall be made, or to be deficient in the due baking or working thereof, or ſhall be wanting in the due weight, or ſhall not be truly marked according to the directions of this act, or ſhall be of any other ſort of bread than ſhall be allowed to be made by virtue of this act; any ſuch magiſtrate or magiſtrates, juſtice or juſtices, peace officer or peace officers, within the limits of their reſpective juriſdictions, may ſeize the ſame; and any ſuch magiſtrate or magiſtrates, juſtice or juſtices, may diſpoſe thereof as he or they, in his or their diſcretion, ſhall think fit.

Magiſtrates, juſtices, or peace officers, properly authorized, may enter in the day time the houſes, ſhops, &c. of bakers, and ſearch for, and weigh, the bread therein; and may ſeize ſuch as ſhall be found wanting in goodneſs, due baking, or weight, or not properly marked, or of any different ſort than is allowed of, and diſpoſe thereof at their diſcretion.

Sect. 29. " And be it further enacted by the authority aforeſaid, That if, at any time after the ſaid twenty-ninth of *September*, information ſhall be given on oath, to any magiſtrate or magiſtrates, juſtice or juſtices of the peace, that there is reaſonable cauſe to ſuſpect that any miller who grinds any grain for toll or reward, or any perſon or perſons who doth or do dreſs, bolt, or in any wiſe manufacture any meal or flour for ſale, or any maker of bread for ſale, within the limits of the juriſdiction of any ſuch magiſtrate or magiſtrates, juſtice or juſtices, doth or do mix up with, or put into, any meal or flour ground or manufactured for ſale, any mixture, ingredient, or thing whatſoever, not the genuine produce of the grain ſuch meal or flour ſhall import and ought to be, or whereby the purity of any meal or flour, in the poſſeſſion of any ſuch miller, mealman, or baker, is or ſhall be in any wiſe adulterated; then, and in every ſuch caſe, it ſhall be lawful for any ſuch magiſtrate or magiſtrates, juſtice or juſtices, and alſo for any peace officer or officers, authorized by warrant or warrants to him or them directed under the hand and ſeal, or hands and ſeals of any magiſtrate or magiſtrates, juſtice or juſtices, within the limits

Where any miller, mealman, or baker, ſhall be ſuſpected of adulterating meal or flour, the magiſtrate, &c. upon information made thereof on oath, may enter the pre-

missies of such suspected person himself, and make search, or may grant a search warrant to some peace officer;

limits of their respective jurisdictions; and which warrant or warrants every such magistrate and magistrates, justice and justices, is and are hereby impowered to grant; at all seasonable times in the day time, to enter into any house, mill, shop, bake-house, stall, bolting-house, pastry, ware-house or out-house, of or belonging to any such miller, mealman, or baker, and to search and examine whether any mixture, ingredient, or thing, not the genuine produce of the grain such meal or flour shall import and ought to be, shall have been mixed up with, or put into, any meal or flour in the possession of any such miller, mealman, or baker, either in the grinding of any grain at the mill, or in the dressing, bolting, or manufacturing thereof, or whereby the purity of any meal or flour is or shall be in any wise adulterated: And if on any such search it shall appear that any offence hath been committed in any mill, bolting-house, or other place allowed to be searched, contrary to the true intent of this act; then, and in every such case, it shall and may be lawful to and for any magistrate or magistrates, justice or justices of the peace, officer or officers, authorized as aforesaid respectively, within the limits of their respective jurisdictions, to seize and take any meal or flour which shall be deemed, on any such search, to have been adulterated, and all mixtures and ingredients which shall be found and deemed to have been used, or intended to be used, in or for any such adulteration; and such thereof as shall be seized by any officer or officers authorized as aforesaid, shall, with all convenient speed, after seizure thereof, be carried to some magistrate or magistrates, justice or justices of the peace, within the limits of whose jurisdiction the same shall have been so seized: And if any magistrate or magistrates, justice or justices of the peace, who shall make any seizure in pursuance of this act, or to whom any thing seized under the authority of this act shall be brought, shall adjudge that any mixture or ingredients, not the genuine produce of the grain any such meal or flour which shall have been so seized, shall import and ought to be, shall have been put into any such meal or flour, or that the purity of any such meal or flour so seized, was adulterated by any mixture or ingredient put therein; then, and in any such case, every such magistrate or magistrates, justice or justices, is and are hereby required, within the limits of their respective jurisdiction, to dispose of the same as he or they, in his or their discretion, shall, from time to time, think proper.

and such meal and flour as shall be deemed to have been adulterated, may be seized, together with the base mixtures and ingredients; and if seized by a peace officer, it is to be carried before a magistrate;

if seized by the magistrate, or adjudged by him to be adulterated,

he may dispose thereof as he thinks proper;

Sect. 30. "And be it further enacted by the authority aforesaid, That every miller, mealman, baker or seller of bread as aforesaid, in whose house, mill, shop, bake-house, stall, bolting-house, pastry, warehouse, out-house, or possession, any mixture or ingredient shall be found, which shall be adjudged by any magistrate or magistrates, justice or justices, to have been lodged there, with an intent to have adulterated the purity of meal, flour or bread, shall, on being convicted of any such offence, either by his, her or their own confession, or by the oath of one or more credible witness or witnesses, before any such magistrate or magistrates, justice or justices of the peace, within whose jurisdiction any such offence shall have been committed, forfeit and pay for every such offence, a sum

and the miller, mealman, or baker, in whose premisses such mixture or ingredients shall be found, and adjudged to be intended to be used in adulterating, is to forfeit upon conviction,

not exceeding ten pounds, nor less than forty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order; unless the party or parties charged with any such offence, shall make it appear to the satisfaction of the magistrate or magistrates, justice or justices, who shall find or seize any such mixture or ingredients, or before whom the same shall be brought, that such mixture or ingredients was or were not brought or lodged where the same was or were found or seized, with any design or intent to have been put into any meal or flour, or to have adulterated therewith the purity of any meal or flour, but that the same was in the place or places in which the same shall have been so found or seized as aforesaid, for some other lawful purpose; and it shall and may be lawful for the magistrate or magistrates, justice or justices, before whom any such offender shall be convicted, out of the money forfeited, when recovered, to cause the offender's name, place of abode and offence, to be published in some news paper which shall be printed or published in or near the county, city or place, where any such offence shall have been committed.

not exceeding 10 l. nor less than 40 s. unless it be made appear, that the same were not lodged there with such intention, but for some other lawful purpose; and part of the forfeiture may be applied in publishing the offender's name, place of abode, and the offence.

Sect. 31. "And be it further enacted by the authority aforesaid, That if any person or persons shall wilfully obstruct or hinder any search as herein is before authorized to be made, or the seizure of any bread, or of any ingredients which shall be found on any such search, and deemed to have been lodged with an intent to adulterate the purity or wholsomness of meal, flour or bread, or shall wilfully oppose or resist any such search being made, or the carrying away any such ingredients as aforesaid, or any bread which shall be seized, as not being made pursuant to this act, he, she or they, so doing or offending in any of the cases aforesaid, shall, on being convicted thereof in manner herein after prescribed, forfeit and pay for every offence such sum, not exceeding five pounds, nor less than twenty shillings, as the magistrate or magistrates, justice or justices, before whom any such offender or offenders shall be convicted, shall think fit and order.

Persons obstructing or opposing any search or seizure, as aforesaid, are to forfeit not exceeding 5 l. nor less than 40 s.

Sect. 32. "Provided always, and be it further enacted by the authority aforesaid, That no person who shall follow, or be concerned in, the business of a miller, mealman or baker, shall be capable of acting, or shall be allowed to act as a magistrate, or justice of the peace, under this act, or in putting in execution any of the powers in or by this act granted; and if any miller, mealman or baker shall presume so to do, he or they so offending in the premisses shall, for every such offence, forfeit and pay the sum of fifty pounds to any person or persons who will inform or sue for the same; to be recovered in any of his majesty's courts of record at *Westminster*, by action of debt, bill, plaint or information; wherein no essoin, wager of law, or more than one imparlance, shall be allowed; or by way of summary complaint before the court of session in that part of *Great Britain* called *Scotland*.

Any miller, mealman or baker, presuming to act as a magistrate or justice in the execution of this act, forfeits 50 l. to the informer. Method of recovery.

Sect. 33. "Provided always, and be it also enacted by the authority aforesaid, That if any person, who shall carry on or follow the trade of a baker, shall, at any time after the twenty-ninth day of *September*, make complaint

Where any baker shall, on complaint, make it appear that the

offence he was charged with, and paid the penalty of, was occaſioned by the wilful default of his journeyman or ſervant,

complaint to any magiſtrate or magiſtrates, juſtice or juſtices of the peace, within their juriſdiction, and make appear to them, by the oath of any credible witneſs, that any offence, which any ſuch perſon who ſhall ſo carry on or follow the ſaid trade of a baker ſhall have been charged with, and ſhall have incurred and paid any penalty under this act, ſhall have been occaſioned by or through the wilful neglect or default of any journeyman, or other ſervant employed by or under any ſuch perſon who ſhall ſo follow or carry on the ſaid trade of a baker; then, and in any ſuch caſe, any

the magiſtrate ſhall iſſue his warrant for apprehending the party;

ſuch magiſtrate or magiſtrates, juſtice or juſtices, may and are hereby required to iſſue out his or their warrant, under his or their reſpective hands and ſeals, for bringing any ſuch journeyman or ſervant before any ſuch magiſtrate or magiſtrates, juſtice or juſtices, or any magiſtrate or juſtice of the county, city, riding, diviſion or place, where the offender can be found; and, on any ſuch journeyman or ſervant being thereupon apprehended, and brought before any ſuch magiſtrate or magiſtrates, juſtice or juſtices, he or they, within their reſpective juriſdictions, is and are hereby authorized and required to examine into the matter of ſuch complaint; and, on

and upon conviction of the offence, ſhall decree a reaſonable recompence to be paid to the maſter;

proof thereof being made upon oath, to the ſatisfaction of any ſuch magiſtrate or magiſtrates, juſtice or juſtices of the peace who ſhall hear ſuch ſaid complaint, then any ſuch magiſtrate or magiſtrates, juſtice or juſtices, is and are hereby directed and authorized, by any order under his or their reſpective hand or hands, to adjudge and order what reaſonable ſum of money ſhall be paid by any ſuch journeyman or ſervant to his maſter or miſtreſs, as or by way of recompence to him or her, for the money he or ſhe ſhall have paid by reaſon of the wilful neglect or default of any ſuch journeyman or ſervant:

and on non-payment thereof, ſhall commit the offender;

And if any ſuch journeyman or ſervant ſhall neglect or refuſe, on his conviction, to make immediate payment of the ſum of money which any ſuch magiſtrate or magiſtrates, juſtice or juſtices, ſhall order him to pay by reaſon of ſuch his ſaid wilful neglect or default; then any ſuch magiſtrate or magiſtrates, juſtice or juſtices, within their reſpective juriſdictions, is and are hereby authorized and required, by warrant under his or

to be kept to hard labour for any time not exceeding 1 month, unleſs payment be ſooner made.

their hands and ſeals, to cauſe every ſuch journeyman or ſervant to be apprehended and committed to the houſe of correction, or ſome other priſon of the county, riding, diviſion, city, town corporate, borough, or place, in which any ſuch journeyman or ſervant ſhall be apprehended or convicted, to be there kept to hard labour for any time not exceeding one calendar month from the time of ſuch commitment, as to ſuch magiſtrate or magiſtrates, juſtice or juſtices, ſhall ſeem reaſonable, unleſs payment ſhall be made of the money ordered after ſuch commitment, and before the expiration of the ſaid term of one calendar month.

Sect. 34. "And, for the better and more eaſy recovery of the ſeveral penalties and forfeitures to be incurred by diſobedience to this act, and the powers herein contained, and diſpoſing of the money which ſhall be forfeited by breach or non-obſervance of any part of this act; be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to

All offences againſt this act may be heard and determined in a ſummary

and for the mayor of the ſaid city of *London* for the time being, or any alderman of the ſaid city, within the ſaid city or liberties thereof; and to and for any other of his majeſty's juſtices of the peace, or any one of them,

within their reſpective counties, ridings, diviſions, cities, towns corporate, boroughs, liberties or juriſdictions, to hear and determine, in a ſummary way, all offences committed againſt the true intent and meaning of this act; and, for that purpoſe, to ſummon before them, or any of them, within their reſpective juriſdictions, any party or parties accuſed of being an offender or offenders againſt the true intent and meaning of this act: And in caſe the party accuſed ſhall not appear on ſuch ſummons, or offer ſome reaſonable excuſe for his default; then, upon oath by any credible witneſs of any offence committed contrary to the true intent and meaning of this act, any ſuch magiſtrate or magiſtrates, juſtice or juſtices, ſhall iſſue his or their warrant or warrants for apprehending the offender or offenders within the juriſdiction of any ſuch magiſtrate or magiſtrates, juſtice or juſtices: And upon the appearance of the party or parties accuſed, or in caſe he or they ſhall not appear, on notice being given to, or left for him or them, at his or their uſual place of abode, or if he or they cannot be apprehended on a warrant granted againſt him or them as herein before is directed; then, and in any ſuch caſe, any ſuch magiſtrate or magiſtrates, juſtice or juſtices, is and and are hereby authorized and required to proceed to make inquiry touching the matters complained of, and to examine any witneſs or witneſſes, who ſhall be offered on either ſide, on oath, as aforeſaid, and which every ſuch magiſtrate or magiſtrates, juſtice or juſtices, is and are hereby authorized, impowered and required to adminiſter; and, after hearing of the parties who ſhall appear, and the witneſſes who ſhall be offered on either ſide, ſuch magiſtrate or magiſtrates, juſtice or juſtices, ſhall convict, or acquit, the party or parties accuſed: And if the penalty, or money forfeited, on any ſuch conviction, ſhall not be paid within the ſpace of twenty-four hours after any ſuch conviction, every ſuch magiſtrate or magiſtrates, juſtice or juſtices, ſhall thereupon iſſue a warrant or warrants under his hand and ſeal, or their hands and ſeals, reſpectively, directed to any peace officer or officers within their reſpective juriſdictions, impowering him or them to make diſtreſs of the goods or chattels of the offender or offenders: And if any offender ſhall convey away his goods out of the juriſdiction of any ſuch magiſtrate or magiſtrates, juſtice or juſtices, before whom he was convicted, or ſo much thereof that the penalty cannot be levied, then ſome magiſtrate or juſtice within whoſe juriſdiction the offender ſhall have removed his goods, ſhall back the warrant granted by any ſuch magiſtrate or juſtice, magiſtrates or juſtices; and thereupon the penalty forfeited ſhall be levied on the offender's goods and chattels, by diſtreſs and ſale thereof; and if within five days from the diſtreſs being taken, the money forfeited ſhall not be paid, the goods ſeized ſhall be appraiſed and ſold, rendering the overplus (if any) after deducting the penalty or forfeiture, and the coſts and charges of the proſecution, diſtreſs and ſale, to the owner; which charges ſhall be aſcertained by the magiſtrate or magiſtrates, juſtice or juſtices, before whom any ſuch offender or offenders ſhall have been ſo convicted, or by the magiſtrate or juſtice who backed the warrant, if either of them ſhall continue alive; and if not, by ſome other magiſtrate or

way, by magiſtrates within their reſpective juriſdictions.

Offenders may be ſummoned;

and not appearing thereto, or offering a reaſonable excuſe, may be apprehended.

Matter of the complaint to be enquired into upon oath, and examination of witneſſes;

and the party to be convicted or acquitted thereupon.

The penalty on nonpayment thereof within 24 hours,

is to be levied by diſtreſs and ſale;

and if the goods and chattels of the party ſhall be removed into another juriſdiction, the magiſtrate thereof is to back the warrant of diſtreſs;

and the diſtreſs, if not redeemed within 5 days, is to be appraiſed and ſold; and all charges, after ſettled by the

magiſtrate, to be deducted thereout; and for want of diſtreſs the offender is to be committed for 1 month,

unleſs payment be ſooner made.

or juſtice of the county, riding, diviſion, city or place, in which the offender ſhall have been convicted; and for want of ſuch diſtreſs, then every ſuch magiſtrate or juſtice, within whoſe reſpective juriſdiction any ſuch offender or offenders ſhall reſide or be, ſhall, on the application of any proſecutor or proſecutors, and proof made of the conviction and nonpayment of the penalty and charges, by warrant under his hand and ſeal, commit every ſuch offender or offenders to the common gaol or houſe of correction of the city or county, riding, diviſion, or place, where ſuch offender or offenders ſhall be found; there to remain for the ſpace of one calendar month from the time of ſuch commitment, unleſs, after ſuch commitment, payment ſhall be made of the ſaid penalty or forfeiture, coſts and charges, before the expiration of the ſaid one calendar month; and all ſuch penalties and forfeitures, when recovered, ſhall be paid to the informer.

Power to ſummon material evidences,

Sect. 35. "And be it further enacted by the authority aforeſaid, That if it ſhall be made out by the oath of any credible perſon or perſons to the ſatisfaction of any magiſtrate or magiſtrates, juſtice or juſtices, that any one within the juriſdiction of any ſuch magiſtrate or magiſtrates, juſtice or juſtices, is likely to give or offer material evidence on behalf of the proſecutor of any offender or offenders againſt the true intent and meaning of this act, or on behalf of the perſon or perſons accuſed, and will not voluntarily appear before ſuch magiſtrate or magiſtrates, juſtice or juſtices, to be examined, and give his, her or their evidence concerning the premiſſes, every ſuch magiſtrate or magiſtrates, juſtice or juſtices, is and are hereby authorized and required to iſſue his or their ſummons to convene every ſuch witneſs and witneſſes before any ſuch magiſtrate or magiſtrates, juſtice or juſtices, at ſuch ſeaſonable time as in ſuch ſummons ſhall be fixed; and if any perſon ſo ſummoned ſhall neglect or refuſe to appear at the time by ſuch ſummons appointed, and no juſt excuſe ſhall be offered for ſuch neglect or refuſal, then (after proof by oath of ſuch ſummons having been duly ſerved upon the party or parties ſo ſummoned) every ſuch magiſtrate and magiſtrates, juſtice and juſtices, is and are hereby authorized and required to iſſue his or their warrant under his hand and ſeal, or their hands and ſeals, to bring every ſuch witneſs or witneſſes before any ſuch magiſtrate or magiſtrates, juſtice or juſtices; and on the appearance of any ſuch witneſs before any ſuch magiſtrate or magiſtrates, juſtice or juſtices, every ſuch magiſtrate or magiſtrates, juſtice or juſtices, is and are hereby authorized and impowered to examine upon oath every ſuch witneſs: And if any ſuch witneſs on his or her appearance, or on being brought before any ſuch magiſtrate or magiſtrates, juſtice or juſtices, ſhall refuſe to be examined on oath concerning the premiſſes, without offering any juſt excuſe for ſuch refuſal, any ſuch magiſtrate or magiſtrates, juſtice or juſtices, within the limits of his or their juriſdiction, may, by warrant under his hand and ſeal, or their hands and ſeals, commit any perſon or perſons ſo refuſing to be examined, to the public priſon of the county, riding, diviſion, city, liberty or place, in which the perſon or perſons ſo refuſing to be examined ſhall be, there to remain

and of compelling, by warrant, to appear, ſuch as ſhall not appear upon ſummons.

Witneſſes to be examined on oath; and on refuſal, without juſt cauſe ſhewn,

remain for any time not exceeding fourteen days, nor less than three days, as any such magistrate or magistrates, justice or justices, shall direct. may be committed for 14 days, but not less than 3.

Sect. 36. " And be it further enacted by the authority aforesaid, That the magistrate or magistrates, justice or justices, before whom any person shall be convicted, in manner prescribed by this act, shall cause such respective conviction to be drawn up in the form, or to the effect following (that is to say) Conviction to be drawn up in the following form.

(*To wit*) BE *it remembered, That on this day of in the year of the reign of* A. B. *is convicted before majesty's justices of the peace for the said county of or for the riding or division of the said county of or for the city, liberty or town of* (as the case shall happen to be) *for and do adjudge him, her* (or them) *to pay and forfeit for the same, the sum of*

Given under the day and year aforesaid.

Sect. 37. " And be it further enacted by the authority aforesaid, That no *certiorari*, letters of advocation, or of suspension, shall be granted, to remove any conviction, or other proceedings had thereon in pursuance of this act. No conviction, or other proceedings, may be removed by *certiorari*, &c.

Sect. 38. " Provided always, and it is hereby further enacted by the authority aforesaid, That if any person convicted of any offence punishable by this act, shall think him, her or themselves aggrieved by the judgment of the magistrate or magistrates, justice or justices, before whom he, she or they shall have been convicted, such person shall have liberty, from time to time, to appeal to the justices at the next general or quarter-sessions of the peace, which shall be held for the county, riding, division, city, liberty, town or place, where such judgment shall have been given, and that the execution of the said judgment shall in such case be suspended; the person so convicted, entering into a recognizance at the time of such conviction, with two sufficient sureties in double the sum which such person shall have been adjudged to pay or forfeit, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the justices at their said next general or general quarter-sessions; which recognizance the magistrate or magistrates, justice or justices, before whom such conviction shall be had, is and are hereby impowered and required to take; and the justices in the said general or general quarter-sessions are hereby authorized and required to hear and finally determine the matter of every such appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party: And if, upon hearing the said appeal, the judgment of the magistrate or magistrates, justice or justices, before whom the appellant or appellants shall have been convicted, shall be affirmed, such appellant or appellants shall immediately pay down the sum he, she or they shall have been adjudged to Persons aggrieved by the judgment of any magistrate or justice, may appeal to the next general or quarter-sessions, and execution of judgment is to be thereupon suspended. Appellant is to enter into recognizance, and give security, to prosecute the appeal with effect, &c. and the justices in their said sessions are to hear and determine the matter thereof, and award costs thereupon.

If the former judgment be affirmed, the appellant is to pay down the forfeiture and costs; and on default is to be committed.

to forfeit, together with such costs, as the justices in their said general or general quarter-sessions, shall award to be paid to the prosecutor or informer, for defraying the expences sustained by reason of any such appeal; and in default of the appellant's paying the same, any two such justices or any one magistrate or justice of the peace, having jurisdiction in the place into which any such appellant or appellants shall escape, or where he, she or they shall reside, shall and may, by warrant under their hands and seals, or his hand and seal, commit every such appellant and appellants to the common gaol of the county, city, riding, division or place, where he, she or they shall be apprehended, until he, she or they shall make payment of such penalty, and of the costs and charges which shall be adjudged on the conviction, to the informer; but if the appellant or appellants in any such appeal shall make good his, her or their appeal, and be discharged of the said conviction, reasonable costs shall be awarded to the appellant or appellants against such informer or informers, who would (in case of such conviction) have been intitled to the penalty to have been recovered as aforesaid; and which costs shall and may be recovered by the appellant or appellants against any such informer or informers, in like manner as costs given at any general or general quarter-sessions of the peace, are recoverable."

If the judgment be reversed, and the appellant be discharged of the conviction, costs are to be awarded and recovered against the informer.

If the conviction shall happen to be within 6 days of the sessions, appeal may then be made to the sessions following.

Sect. 39. "Provided also, and be it further enacted by the authority aforesaid, That if any such conviction shall happen to be made within six days before any general or general quarter-sessions of the peace, which shall be held for the county, riding, division, city, town corporate, borough or place where such conviction shall have been made, then the party or parties who shall think him, her or themselves aggrieved by any such conviction, shall and may, on entering into a recognizance in manner and for the purposes before directed, be at liberty to appeal either to the then next or the next following general or general quarter-sessions of the peace, which shall be held for any such county, riding, division, city, town corporate, borough, liberty or place, where any such conviction shall have been made."

Limitation of actions against magistrates, and justices, and peace officers.

Sect. 40. "And be it further enacted by the authority aforesaid, That every action or suit which shall be brought or commenced against any magistrate or magistrates, justice or justices, or any peace officer or officers, for any matter or thing done or committed by virtue of, or under this act, shall be commenced within six months next after the fact committed, and not afterwards; and shall be laid or brought in the county, city or place, where the matter in dispute shall arise, and not elsewhere; and that the statute made in the twenty-fourth year of his present majesty's reign, intituled, An act for rendering the justices of the peace more safe in the execution of their office; and for indemnifying constables and others, acting in obedience to their warrants; so far as the said act relates to the rendering the justices more safe in the execution of their office, shall extend and be construed to extend to the magistrate and magistrates, justice and justices of the peace, acting under the authority or in pursuance of this act; and that no action or suit shall be had or commenced against, nor shall any

Act of 24 Geo. 2. extended to magistrates and justices acting under authority of this act.

any writ be ſued out, or copy of any writ be ſerved upon any peace officer or officers, for any thing done in the execution of this act, until ſeven days after a notice in writing ſhall have been given to, or left for him or them, at his or their uſual place of abode, by the attorney for the party intending to commence ſuch action; which notice in writing ſhall contain the name and place of abode of the perſon intending to bring ſuch action, and alſo of his attorney, and likewiſe the cauſe of action or complaint: And any peace officer or officers ſhall be at liberty, and may, by virtue of this act, at any time within ſeven days after any ſuch notice ſhall have been given to or left for him, tender, or cauſe to be tendered, any ſum or ſums of money, as amends for the injury complained of, to the party complaining, or to the attorney named in any ſuch notice; and, if the ſame is not accepted of, the defendant or defendants in any ſuch action or actions may plead ſuch tender in bar of ſuch action or actions, together with the general iſſue, or any other plea, with leave of the court in which the action ſhall be commenced: And if upon iſſue joined on ſuch tender, the jury ſhall find the amends tendered to have been ſufficient, they ſhall find a verdict for the defendant or defendants: And in every ſuch caſe, or if the plaintiff ſhall become nonſuit, or diſcontinue his action; or if judgment ſhall be given for the defendant or defendants upon demurrer; or if any action or ſuit ſhall be brought after the time limited by this act for bringing the ſame, or ſhall be brought in any other county or place than as aforeſaid; then, and in any ſuch caſe the jury ſhall find for the defendant or defendants; and the defendant or defendants ſhall be intitled to his or their coſts: But if the jury ſhall find that no ſuch tender was made, or that the amends tendered were not ſufficient, or ſhall find againſt the defendant or defendants, on any plea or pleas by him or them pleaded; they ſhall then give a verdict for the plaintiff, and ſuch damages as they ſhall think proper, and the plaintiff ſhall thereupon recover his coſts againſt every ſuch defendant and defendants."

7 days notice to be given to peace officers, before the iſſuing out any action againſt them.

notice to contain the name and abode of the proſecutor, and his attorney, and cauſe of action.

Officer may thereupon make tender of amends; and plead the ſame, together with the general iſſue, &c. in bar of ſuch action.

Defendant recovering, to be allowed his coſts.

Plaintiff recovering, intitled to damages and coſts.

Sect. 41. "And be it further enacted by the authority aforeſaid, That if any action or ſuit ſhall be commenced againſt any perſon or perſons for any thing done in purſuance of this act, the defendant or defendants in any ſuch action or ſuit may plead the general iſſue, and give this act and the ſpecial matter, in evidence, at any trial to be had thereupon; and that the ſame was done in purſuance and by the authority of this act: And if it ſhall appear ſo to have been done, or if a verdict ſhall be recorded for the defendant or defendants; or if the plaintiff ſhall be nonſuited, or diſcontinue his action, after the defendant or defendants ſhall have appeared; or if judgment ſhall be given upon a verdict or demurrer, againſt the plaintiff or plaintiffs; the defendant or defendants in every ſuch action ſhall and may recover treble coſts; and have the like remedy for the ſame as any defendant or defendants hath or have in other caſes by law for recovery of his, her, or their coſts."

Perſons ſued on this act, may plead the general iſſue;

and obtaining a verdict, recover treble coſts.

Sect. 42. "Provided always, That no perſon ſhall be convicted, in manner aforeſaid, for any of the before-mentioned offences, unleſs the proſecution, in

Proſecution to be commenced within 3 days

after the offence.

in order to such conviction, be commenced within three days next after the offence commmitted.

General reservation of rights.

Sect. 43. Provided also, and be it enacted, That this act, or any thing herein contained, shall not extend to prejudice any right or custom of the city of *London*, or the practice there used, or any right or custom of any lord or lords of any leet, to set, inquire and punish the breach of assize of bread, within their respective leets or views of frank pledge, or the right of any clerk or clerks of the market in any place.

Reservation of rights of the dean and high steward of Westminster, to set an assize of bread, within the city and liberty of Westminster;

Sect. 44. Provided further, and it is hereby likewise enacted, That neither this act, or any thing herein contained, shall extend, or be construed to extend, to prejudice the ancient right or custom of the dean of the collegiate church of *Saint Peter Westminster*, or the high steward of the city of *Westminster*, and the liberties thereof, or his deputy, or any of them, to set, ascertain and appoint the assize and weight of all sorts of bread to be sold or exposed to sale within the said city of *Westminster*, and the liberties thereof; but they, and every of them, shall and may severally and respectively, from time to time, as there shall be occasion, set, ascertain and appoint, within the said city of *Westminster* and the liberties thereof, according to the true intent and meaning of this act, the assize and weight of all sorts of bread which shall be made, sold or exposed to sale, by any person or persons within the limits of the said city of *Westminster* and the liberties thereof; and shall and may inquire and punish the breach of every such assize and weight of bread, as fully and freely in all respects, as they, or any of them, have hitherto been accustomed to do, and as if this act had never been made; any thing contained to the contrary thereof notwithstanding."

and punish any breach thereof.

Reservation of rights to the universities of Oxford and Cambridge, to set an assize of bread within their jurisdictions;

Sect. 45. "Provided likewise, That neither this act, nor any thing herein contained, shall extend, or be construed to extend, to prejudice the ancient right or custom of the two universities of *Oxford* or *Cambridge*, or either of them, or of their or either of their clerks of the market, or the practice within the several jurisdictions of the said universities, or either of them, used, to set, ascertain and appoint the assize and weight of all sorts of bread to be sold or exposed to sale within their several jurisdictions; but that they, and every of them, shall and may severally and respectively, from time to time, as there shall be occasion, set, ascertain and appoint, within their several and respective jurisdictions, the assize and weight of all sorts of bread to be sold or exposed to sale by any baker or other person whatsoever, within the limits of their several jurisdictions; and shall and may inquire and punish the breach thereof, as fully and freely in all respects as they used to do, and as if this act had never been made; any thing herein contained to the contrary thereof notwithstanding."

and punish any breach thereof.

Stat. 32 *Geo.* 2. *c.* 18. [*A. D.* 1758.] *made, among other purpoſes,* "To appropriate certain penalties mentioned in an act made in the laſt ſeſſion of parliament, for the due making of bread; and to regulate the price and aſſize thereof; and to puniſh perſons who ſhall adulterate meal, flour or bread."

Sect. 2. And whereas ſeveral of the penalties or forfeitures made payable by an act paſſed in the thirty-firſt year of his preſent majeſty's reign, intituled, "An act for the due making of bread; and to regulate the price and aſſize thereof; and to puniſh perſons who ſhall adulterate meal, flour or bread"; were not by ſuch ſaid laſt mentioned act appropriated how or to whom the ſame ſhould, when paid or recovered, go or be diſtributed; Be it therefore further enacted by the authority aforeſaid, That ſuch of the penalties or forfeitures which, from and after the twenty-fourth day of *June* one thouſand ſeven hundred and fifty-nine, ſhall incur or become payable by or under the ſaid laſt-mentioned act, or by reaſon of any thing therein contained (as by the ſaid act are not particularly diſpoſed of, or appropriated, how or to whom the ſame ſhould go or be applied) ſhall, when the ſame ſhall be recovered or paid, go and be diſtributed in manner following; that is to ſay, one moiety thereof, where any offender or offenders ſhall be convicted, either by his, her or their own confeſſion, or by the oath of one or more credible witneſs or witneſſes, ſhall go and be paid to the perſon or perſons, who ſhall inform againſt and proſecute to conviction, any ſuch offender or offenders; and the other moiety thereof, and alſo all penalties and forfeitures, which, from the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and fifty-nine, ſhall incur, be due or payable, under the ſaid laſt-mentioned act, on the weighing, trying or ſeizure of any bread, by any magiſtrate or magiſtrates, juſtice or juſtices, ſhall go and be applied for the better carrying into execution the purpoſes of the ſaid laſt-mentioned act, as any ſuch magiſtrate or magiſtrates, juſtice or juſtices, within his or their reſpective juriſdiction, ſhall from time to time think fit and order."

Act 31 Geo. II.

Diſtribution of the unappropriated penalties and forfeitures under the ſaid act; *viz.* one moiety to the proſecutor, where the offender ſhall be convicted by oath, or ſelf-confeſſion; and the other moiety, with the penalties, on weighing trying, or ſeizure of bread, by a magiſtrate, to ſuch purpoſes as the magiſtrate ſhall think fit.

Stat. 3 *Geo.* 3. *c.* 11. [*A. D.* 1763. *intituled*] "An act for explaining and amending an act made in the thirty-firſt year of the reign of his late majeſty king *George* the ſecond, intituled, An act for the due making of bread; and to regulate the price and aſſize thereof: and to puniſh perſons who ſhall adulterate meal, flour or bread."

Preamble.

Whereas the ſtatute made in the thirty-firſt year of the reign of his late majeſty king *George* the ſecond, intituled, "An act for the due making of bread, and to regulate the price and aſſize thereof; and to puniſh perſons who ſhall adulterate meal, flour or bread"; is deficient in ſeveral of the proviſions thereby made when an aſſize of bread is not ſet purſuant to the directions of the ſaid act: For remedy wherein, and in order that makers of bread for ſale, and the ſellers thereof, may in all places, although the aſſize of bread ſhall at any time not be ſet, be under due regulations; Be it

enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled and by the authority of the ſame, That from and after the firſt day of *May* one thouſand ſeven hundred and ſixty-three, although no aſſize of bread ſhall be ſet in purſuance of the ſaid act, no loaf or loaves of bread, called or deemed aſſize loaf or loaves in the tables of the aſſize and price of bread in the ſaid act enacted and referred to, and the weight of which varies according to the variation in the price of grain, ſhall be made for ſale, ſold or carried out for ſale, or be offered or expoſed to or for ſale, or be allowed to be ſold in any place, where any loaf or loaves of the bread called or deemed prized loaf or loaves in the ſaid tables of the aſſize and price of bread, in and by the ſaid act enacted and referred to, and the price of which varies according to the variation in the price of grain, ſhall at the ſame time be made for ſale, or be allowed to be ſold; that is to ſay, no aſſize loaves of the price of three pence, and prized loaves called half quartern loaves, nor aſſize loaves of the price of ſix pence, and prized loaves called quartern loaves, nor aſſize loaves of the price of twelve pence, and prized loaves called half peck loaves, nor aſſize loaves of the price of eighteen pence, and prized loaves called peck loaves, ſhall at the ſame time, in any place be made for ſale, ſold, or carried out for ſale, or be offered or expoſed to or for ſale, or allowed to be ſold; that unwary perſons may not in any wiſe be impoſed on, and prejudiced by buying aſſize loaves referred to in the ſaid tables, as or for prized loaves referred to in the ſaid tables; or by buying ſuch prized loaves as or for ſuch aſſize loaves; and every perſon who ſhall offend in the premiſſes, and be convicted of any ſuch offence in manner hereafter ſpecified, ſhall, for every ſuch offence, forfeit and pay a ſum not exceeding forty ſhillings, nor leſs than ten ſhillings, as the juſtice or juſtices, before whom any ſuch offender or offenders ſhall be convicted, ſhall, from time to time, adjudge."

After 1 May 1763, no aſſized and prized bread to be made at the ſame time in the ſame place,

upon penalty of forfeiting not exceeding 40s. nor leſs than 10s.

Sect. 2. "And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-three, although no aſſize of bread ſhall be ſet purſuant to the directions of the ſaid act, the juſtices of the peace of every county, riding, diviſion, city town, liberty and place, ſhall and may, at any general or quarter ſeſſion of the peace which ſhall be held within their reſpective counties, diviſions, cities, towns, liberties or juriſdictions, or at any petty ſeſſion which ſhall be held by any ſuch juſtices within their reſpective juriſdictions, from time to time, aſcertain and appoint (as often as they ſhall think proper) for all or any part of their reſpective juriſdictons, which of the ſorts of aſſize or prized loaves ſhall be allowed from time to time to be made and ſold within their reſpective juriſdictions; and alſo what other ſorts of bread, and of what ſort and ſorts of grain, ſhall be allowed to be made and ſold within their reſpective juriſdictions, or within any part thereof; and every order which ſhall be ſo from time to time made in or touching the premiſſes by any ſuch juſtices, ſhall be entered in a book to be provided and kept for that purpoſe by ſuch juſtices, and which book ſhall and may be inſpected

Juſtices, at any general, quarter, or petty ſeſſion, may appoint which of the ſorts of aſſize or prized loaves,

and what other ſorts of bread, and of what grain, ſhall be made for ſale, they cauſing an entry to be made of ſuch orders; which is to be free for inſpection;

ſpected by the makers of bread for ſale, within the reſpective juriſdiction of any ſuch juſtices, at all ſeaſonable times in the day time, and without paying any fee or reward in reſpect thereof; and after the making every ſuc horder by any ſuch juſtices, the juſtices who ſhall make the ſame ſhall, with all convenient ſpeed, cauſe a copy of every ſuch order to be affixed or put up in ſome market or other public town within the diviſion or part of the county, riding, liberty, rape, wapentake, city, town, or place, in which ſuch order is to be obſerved and take place: or elſe every ſuch juſtices, within their reſpective juriſdictions, ſhall cauſe a copy of every ſuch order to be, with all convenient ſpeed after the making thereof reſpectively, inſerted in ſome public news paper which ſhall be publiſhed in the county, riding, diviſion, liberty, rape, wapentake, city, town or place, or ſome part thereof, in which every ſuch order reſpectively is to be obſerved and take place."

and a copy thereof to be ſet up in ſome market, or other public place, or publiſhed in the country news papers

Sect. 3. "Provided always, and be it enacted by the authority aforeſaid, That no juſtices, within their reſpective juriſdiction, ſhall at any time allow the making for ſale, or ſelling, any ſorts of aſſize bread made of the flour or meal of wheat, other than and beſides wheaten and houſhold bread, and loaves of white bread of the price of two pence or under."

The only ſorts of aſſize bread made of wheat which ſhall be allowed.

Sect. 4. "And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-three, although the aſſize of bread ſhall not be ſet purſuant to the ſaid act, every maker of bread for ſale ſhall obſerve and keep the ſame or like proportion between white and wheaten bread, and wheaten and houſhold aſſize bread, as to weight, as is mentioned or intended, enacted and referred to in the ſaid aſſize tables; that is to ſay every white loaf of the price of two pence, or under, ſhall always weigh three parts in four of the weight of the wheaten loaf of the like price, as near as may be; and every wheaten aſſize loaf of bread, of whatſoever price the ſame ſhall be, ſhall always weigh three parts in four of the weight of every houſhold aſſize loaf of bread of the like price as near as may be; and that every houſhold aſſize loaf of bread, of whatever price the ſame ſhall be, ſhall always weigh one third part more than every wheaten aſſize loaf of the like price as near as may be; and every perſon who ſhall make for ſale, ſell, offer or expoſe to or for ſale, or have in his or her cuſtody for ſale, any loaf of white, wheaten, or houſhold bread, in which the ſaid proportions or regulations ſhall not be obſerved and kept, as near as may be, ſhall on being convicted of any ſuch offence in manner herein after-mentioned, forfeit and pay, for every ſuch offence, a ſum not exceeding forty ſhillings, as the juſtice or juſtices before whom any ſuch offender or offenders ſhall be convicted, ſhall, from time to time, adjudge."

A like proportion, as to weight, is to be kept between the white and wheaten bread and the wheaten and houſhold aſſize bread; viz.

on penalty of forfeiting, not exceeding 40 s.

Sect. 5. "And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-three, although the aſſize of bread ſhall not be ſet purſuant to the ſaid act, every peck, half peck, quarter of a peck, and half quarter of a peck loaf, made for ſale, of the meal or flour of wheat, and called *wheaten bread*, ſhall always be ſold in proportion to each other reſpectively, as to price;

A proportion in the price is to be kept in the peck loaf, and half peck, and it's other ſubdiviſions, both in the

wheaten and in houſhold bread; and the houſhold is to be one fourth cheaper than the wheaten;

price; and that every peck, half peck, quarter of a peck, and half quarter of a peck loaf, made for ſale, of the meal or flour of wheat, and called *houſhold bread*, ſhall always be ſold in proportion to each other, and for one fourth leſs in price than the loaf made for ſale with the meal or flour of wheat, called *wheaten bread*, of the ſame denomination; and every perſon who ſhall in any wiſe offend in the premiſſes, ſhall, for every loaf of either the ſaid wheaten or houſhold bread which ſhall be ſold by him or her, or offered or expoſed to or for ſale, or found in his or her cuſtody for ſale, contrary to the true intent and meaning of this act, forfeit and pay a ſum not exceeding forty ſhillings, nor leſs than ten ſhillings, as the juſtice or juſtices before whom any ſuch offender or offenders ſhall be convicted, ſhall, from time to time, adjudge.

on penalty of forfeiting, not exceeding 40 s. nor leſs than 10s.

The weight the peck loaf, and its ſubdiviſions, are to weigh, in every ſort of bread which ſhall be made for ſale, *viz.*

Sect. 6. "And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-three, although the aſſize of bread ſhall not be ſet purſuant to the ſaid recited act, the ſeveral loaves herein after-mentioned of every ſort of bread which ſhall be made for ſale, ſhall always weigh in averdupois weight as follows; that is to ſay, every peck loaf, ſeventen pounds ſix ounces; every half peck loaf, eight pounds eleven ounces; every quarter of a peck loaf, four pounds five ounces, and one half ounce; and every half quarter of a peck loaf, two pounds two ounces and three quarters of one ounce: and every perſon who ſhall make for ſale, or offer or expoſe to or for ſale, or have in his or her poſſeſſion for ſale, any peck, half peck, quarter of a peck, or half quarter of a peck loaf, in any wiſe deficient of the due weight the ſame ought to be as aforeſaid, ſhall, on being convicted of any ſuch offence in manner herein after mentioned, forfeit and pay a ſum not exceeding five ſhillings, nor leſs than one ſhilling, for every ounce of every loaf of ſuch bread, which ſhall at any time be found wanting or deficient of or in the due weight the ſame ought to be as aforeſaid; and for every ſuch loaf of bread which ſhall be found wanting leſs than one ounce of the due weight the ſame ought to be as aforeſaid, a ſum not exceeding two ſhillings and ſix pence, nor leſs than ſix pence, as any juſtice or juſtices before whom any ſuch loaf of bread, which ſhall not be of the due weight the ſame ought to be as aforeſaid, ſhall adjudge; ſo as all ſuch bread which ſhall be complained of, as wanting at any time of the due weight the ſame ought to be in any city, town corporate, borough, liberty, or franchiſe, or the juriſdiction thereof, or within the weekly bills of mortality, ſhall, from time to time, be brought before ſome juſtice or juſtices, having juriſdiction in the premiſſes, and ſhall be weighed before ſuch juſtice or juſtices within twenty-four hours after the ſame ſhall have been baked, ſold or expoſed to or for ſale, or found in any perſon's cuſtody for ſale; and ſo as all ſuch bread which ſhall be complained of as wanting at any time in the due weight the ſame ought to be as aforeſaid, in any hundred, riding, diviſion, rape, wapentake, or other place out of any city, town corporate, borough, liberty, or franchiſe, or the juriſdiction thereof, or out of the weekly bills of mortality, ſhall from time to time, be brought before ſome juſtice or juſtices of ſuch hundred, riding, diviſion,

on forfeiture not exceeding 5 s. nor leſs than 1 s. for every ounce wanting in the weight; nor exceeding 2 s. 6 d. nor leſs than 6 d. for all under 1 oz.

the ſame to be weighed before a juſtice, within 24 hours after being baked, ſold, or expoſed to ſale, &c. if within any city, town corporate, &c. or within the bills of mortality; and in other places, within 3 days;

diviſion, liberty, rape or wapentake, or other place, and ſhall be weighed before ſuch juſtice or juſtices within three days after the ſame ſhall have been baked, offered or expoſed to or for ſale, or found in any perſon's cuſtody for ſale; unleſs it ſhall be made out to the ſatisfaction of any ſuch juſtice or juſtices before whom any ſuch bread ſhall be brought, by or on the behalf of the party or parties againſt whom any ſuch complaint or information ſhall be made, that ſuch deficiency in weight wholly aroſe from ſome unavoidable accident in baking or otherwiſe, or was occaſioned by or through ſome contrivance or confederacy.

unleſs ſuch deficiency ſhall be ſatisfactorily accounted for.

Sect. 7. "And be it further enacted by the authority aforeſaid, That after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-three, although an aſſize of bread ſhall not be ſet purſuant to the ſaid act, no perſon ſhall ſell, or offer or expoſe to or for ſale, or have in his or her cuſtody any bread of an inferior quality to wheaten bread, with intent to ſell the ſame at an higher price than houſhold bread ſhall at the ſame time ſell for in the place where any bread of ſuch inferior quality ſhall be ſold, or offered to or for ſale, or be found for ſale in any perſon's cuſtody; upon pain that every one who ſhall offend in the premiſſes ſhall, for every ſuch offence, on being thereof convicted in manner herein after mentioned, forfeit and pay not exceeding the ſum of twenty ſhillings, as the juſtice or juſtices, before whom any ſuch offender or offenders ſhall be convicted, ſhall from time to time adjudge.

Bread of an inferior quality to wheaten, not to be ſold at a higher price than the houſhold; on forfeiture, not exceeding 20s.

Sect. 8. "And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-three, although the aſſize of bread ſhall not be ſet purſuant to the ſaid act, all perſons who ſhall make for ſale, ſell, offer or expoſe to or for ſale, or have in his or her cuſtody for ſale, any of the ſaid wheaten or houſhold bread, ſhall, from time to time, cauſe to be imprinted on every reſpective loaf thereof, as followeth; that is to ſay, on every loaf of the ſaid wheaten bread, a large *Roman* (W), and on every loaf of the ſaid houſhold bread, a large *Roman* (H): And if any perſon, after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-three, ſhall make for ſale, ſell, offer or expaſe to or for ſale, or have in his or her cuſtody for ſale, any loaf of the ſaid wheaten or houſhold bread, which ſhall not be marked as hereby is directed, ſo as the ſame may, on the view thereof, be aſcertained under what denomination or ſort of bread every ſuch loaf was and ought to be weighed (except as to ſuch loaves which ſhall be raſped after the beſpeaking or purchaſing thereof, by the particular deſire of the perſon who ſhall order the ſame to be ſo raſped for his or her own uſe) he or ſhe, who ſhall ſo offend in the premiſſes, and ſhall be thereof convicted in manner herein after mentioned, ſhall, for every loaf of ſuch bread not marked as hereby is directed, which ſhall be found in his or her cuſtody, forfeit and pay a ſum not exceeding forty ſhillings, nor leſs than ten ſhillings, as the juſtice or juſtices, before whom any ſuch offender or offenders ſhall be convicted, ſhall from time to time adjudge; unleſs it ſhall be made out to the ſatisfaction of ſuch juſtice or juſtices, by or on the behalf of the party or parties againſt whom any ſuch complaint or information

A large *Roman* (W) to be imprinted on all wheaten bread made for ſale; and a large *Roman* (H) on all houſhold bread; on penalty of forfeiting not exceeding 40s. nor leſs than 10s. unleſs ſuch omiſſion ſhall be ſatisfactorily accounted for.

formation ſhall be made, that the not marking or not duly marking thereof wholly aroſe from ſome unavoidable accident in baking, or otherwiſe, or was occaſioned by or through ſome contrivance or confederacy.

Bread made of any other grain than wheat, to be impreſſed with ſuch letter as the juſtices ſhall order;

Sect. 9. "And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-three, although the aſſize of bread ſhall not be ſet purſuant to the directions of the ſaid act, every loaf of every ſort of bread made of the meal or flour of any other ſort of grain than wheat, which ſhall be made for ſale, or be ſold, carried out, offered or expoſed, in any wiſe, to or for ſale, ſhall be marked with ſome ſignificant and diſtinct letter or letters, not more than two thereon reſpectively, as the juſtices of any county, riding, diviſion, liberty, city, town or place, at any general or quarter-ſeſſion of the peace which ſhall be holden within their reſpective counties, ridings, diviſions, liberties, cities, towns or places within their reſpective juriſdictions, or at any petty ſeſſion which ſhall be held by any ſuch juſtices within their reſpective juriſdictions, ſhall from time to time, for their reſpective counties, ridings, diviſions, liberties, rapes, wapentakes, cities, towns, or places, or any part thereof, order or direct; and every ſuch order ſhall, with all convenient ſpeed after the making thereof, be entered in ſome book to be for that purpoſe provided and kept by ſuch juſtices, and whereunto any maker of bread for ſale reſiding within any ſuch county, diviſion, liberty, rape, wapentake, city, town or place, ſhall be at liberty to reſort at ſeaſonable times in the day-time, and to peruſe every ſuch order without being ſubject or liable to pay any fee or reward in reſpect thereof; and ſuch juſtices as aforeſaid ſhall, with all convenient ſpeed after the making any ſuch order as aforeſaid, cauſe a copy thereof to be affixed or put up in ſome market or other public town within the diviſion or part of the county, riding, liberty or place, in which ſuch order as aforeſaid is to be obſerved or take place, or in ſome publick place in every city, town or place, where ſuch order is to be obſerved or take place; or otherwiſe ſuch juſtices, within their reſpective juriſdictions, ſhall cauſe a copy of every ſuch their reſpective order, with all convenient ſpeed after the making thereof, to be inſerted in ſome public news paper which ſhall be uſually publiſhed in the county, riding, diviſion, liberty, rape, wapentake, city, town or place, or ſome part thereof, in which ſuch order as aforeſaid is to be obſerved or take place; and if the juſtices as aforeſaid ſhall at any time, in any place, neglect or omit to make any order, from time to time, with what letter or letters ſuch bread which ſhall be made for ſale, of the meal or flour of any other ſort of grain than wheat, ſhall be marked, then the maker of all ſuch bread for ſale ſhall, in every place where no ſuch order ſhall be made or be in force, cauſe every loaf of ſuch bread he or ſhe ſhall make, or cauſe to be made for ſale, or ſhall ſell, or offer or expoſe to or for ſale, to be reſpectively marked with any two diſtinct capital letters as he or ſhe ſhall think fit; and every perſon who, after the firſt day of *May* one thouſand ſeven hundred and ſixty-three, ſhall make for ſale, ſell, offer or expoſe to or for ſale, or have in his or her cuſtody, for ſale, any loaf of any ſuch ſort of bread which ſhall be made with the meal or flour of any other ſort of grain than wheat,

they cauſing an entry to be made of ſuch order; which is to be free for inſpection;

and a copy thereof to be ſet up in ſome market or other public place,

or publiſhed in the country news papers.

Where the juſtices neglect to make ſuch order, the maker is to mark every ſuch loaf with 2 diſtinct capital letters;

wheat, which ſhall not be marked as herein before is directed, ſo as that the ſame may, on view thereof, be aſcertained under what denomination every ſuch loaf was made (except ſuch loaves thereof which ſhall be raſped after the beſpeaking or purchaſing thereof, by the particular deſire of the perſon who ſhall order the ſame to be raſped for his or her own uſe) ſhall, for every time he, ſhe or they ſhall ſo offend in the premiſſes, and be thereof convicted in manner herein after directed, forfeit and pay a ſum not exceeding forty ſhillings, nor leſs than five ſhillings, for every loaf of ſuch bread which ſhall not be ſo marked as herein before is firſt directed, as the juſtice or juſtices before whom any ſuch offender ſhall be convicted ſhall, from time to time, adjudge.

on penalty of forfeiting not exceeding 40s. nor leſs than 5s. for every ſuch unmarked loaf.

Sect. 10. "And to the end the good deſign of this ſtatute may be more effectually accompliſhed; be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-three, it ſhall and may be lawful for any juſtice or juſtices within the limits of their reſpective juriſdictions, although the aſſize of bread ſhall not be there ſet according to the ſaid herein before in part recited act; and alſo for any peace officer or officers authorized by warrant under the hand and ſeal, or hands and ſeals, of any ſuch juſtice or juſtices (and which warrant any ſuch juſtice or juſtices is and are hereby empowered to grant within their reſpective juriſdictions), to enter into any houſe, ſhop, ſtall, bakehouſe, warehouſe, or outhouſe, or other place, of or belonging to any baker or ſeller of bread, and to ſearch, view, weigh, examine and try all or any bread which ſhall be there found; and alſo to view, weigh and try all bread made for ſale, which at any time ſhall be offered or expoſed to or for ſale, or found in any one's cuſtody for ſale, in any wiſe howſoever, within the reſpective juriſdiction of any ſuch juſtice or juſtices: and if any loaf or loaves of bread of any denomination, ſhall, on any ſearch, view, weighing, trial or examination thereof, by any juſtice or juſtices, or on any complaint made to, or information given before, any juſtice or juſtices, and proved by the oath of one or more credible witneſs or witneſſes, be found to be deficient in the due weight the ſame ought to be, or not to be marked according to the directions and intent of this act, or to be deficient in the due baking or working thereof, or to be wanting in the goodneſs of the ſtuff whereof or wherewith any ſuch loaf ſhall have been made, or to have been made with any mixture of meal or flour of any other ſort of grain than of the grain the ſame ſhall import to be made with, or to be made with any larger or other proportion of any other or different ſort or ſorts of grain, or the meal or flour thereof, than what ought to be put therein, or to be made with any mixture or ingredient which by the ſaid in part recited act ought not to be put therein; or to be made with any thing as for or in lieu of flour which ſhall not really be the genuine flour the ſame ſhall import to be and ought to be, or that any ſuch bread ſhall be made with any leaven not allowed by the ſaid in part recited act to be uſed in making bread; then, and in every or any of the ſaid caſes, every ſuch juſtice or juſtices, peace officer and officers as aforeſaid, is and are hereby reſpectively, within the limits of their ſeveral juriſdictions, impowered

Juſtices, and peace officers (authorized by warrant of a juſtice) may enter the houſes of bakers, and ſearch for, examine, and weigh all bread made for, or expoſed to ſale, &c. and bread found defective in the weight, or not duly marked, or wanting in due baking, or goodneſs, or being fraudulently mixt, &c.

may be seized, and given to the poor; unless such default shall be satisfactorily accounted for; powered and required by the authority of this act, to seize every loaf of such bread, and to dispose thereof to poor persons, as such justice or justices in his or their discretion shall, from time to time, within their respective jurisdictions, think fit; unless it shall be made out to the satisfaction of any such justice or justices, by or on the behalf of the party or parties against whom any such complaint or information as aforesaid shall be made, that the default found or complained of wholly arose from some unavoidable accident, or was occasioned by or through some contrivance or confederacy; and every maker and seller of bread respectively as aforesaid, whose bread shall at any time be found before any justice or justices wanting in the goodness of the stuff, whereof or wherewith the same should have been made, or to be made with any mixture of meal or flour of any other sort of grain than of the grain the same shall import to be made with, or to be made with any larger or other proportion of any other or different sort or sorts of grain, or the meal or flour thereof, than what ought to be put therein, or to be made with any mixture or ingredient not allowed by the said in part recited act to be put therein, or to be made with any thing as for or in lieu of flour, which shall not really be the genuine flour the same shall import to be and ought to be, or to be made with any leaven not allowed by the said in part recited act to be used in making such bread, shall, for every such offence, on being convicted thereof in manner herein after mentioned, also forfeit and pay a sum not exceeding five pounds, nor less than twenty shillings, as the justice or justices, before whom any such offender or offenders shall be convicted, shall from time to time adjudge, unless the default found or complained of shall be made out to the satisfaction of any such justice or justices, by or on the behalf of the party or parties against whom such complaint or information as aforesaid shall be made, to have wholly arose from some unavoidable accident, or to have been occasioned by or through some contrivance or confederacy.

and the maker and seller shall also forfeit not exceeding 5l. nor less than 20s. for every such offence; unless the default shall be satisfactorily accounted for.

Sect. 11. "And be it further enacted by the authority aforesaid, That from and after the said first day of *May* one thousand seven hundred and sixty-three, although the assize of bread shall not be set according to the said in part recited act, if any person or persons shall wilfully obstruct, hinder, resist, or in any wise oppose any search, view, weighing, trying or seizing of any loaf or loaves of bread, authorized by this act to be made or tried, he, she or they, who shall so offend in the premisses, shall, for every such offence, on being convicted thereof in manner herein after mentioned, forfeit and pay such sum of money not exceeding forty shillings, nor less than twenty shillings, as the justice or justices before whom any such offender or offenders shall be convicted shall, from time to time, adjudge.

Penalty of opposing any legal search, view, weighing, trying or seizing of bread, is not to exceed 40s. nor be less than 20s.

Sect. 12. "Provided always, and be it further enacted by the authority aforesaid, That no person who shall follow, or be concerned in the business of a miller, mealman or baker, shall be capable of acting, or shall be allowed to act as a justice of the peace under this act, or in putting in execution any of the powers in or by this act granted; and if any miller,

No miller, mealman or baker, may act as a justice in the execution of this act, on penalty of 50l.

miller, mealman or baker ſhall preſume ſo to do, he or they ſo offending in the premiſſes ſhall, for every ſuch offence, forfeit and pay the ſum of fifty pounds to any perſon or perſons who will inform or ſue for the ſame; to be recovered in any of his majeſty's courts of record at *Weſtminſter*, by action of debt, bill, plaint or information, wherein no eſſoin, wager of law, or more than one imparlance ſhall be allowed, or by way of ſummary complaint, before the court of ſeſſion in that part of *Great Britain* called *Scotland*.

Baker making it appear, that any offence for which he ſhall have paid the penalty, was occaſioned by the neglect or default of his ſervant;

Sect. 13. "Provided always, and be it alſo enacted by the authority aforeſaid, That if any perſon, who ſhall carry on or follow the trade of a baker, ſhall, at any time after the ſaid firſt day of *May* one thouſand ſeven hundred and ſixty-three, make complaint to any juſtice or juſtices of the peace within his or their juriſdiction, and make appear to him or them by the oath of any credible witneſs, that any offence which any ſuch perſon who ſhall ſo carry on, or follow the ſaid trade of a baker, ſhall have been charged with, and ſhall have incurred and paid any penalty under this act, ſhall have been occaſioned by or through the wilful neglect or default of any journeyman or other ſervant employed by or under any ſuch perſon, who ſhall ſo follow or carry on the ſaid trade of a baker; then, and in any ſuch caſe, every ſuch juſtice and juſtices may, and is and are hereby required to iſſue out his or their warrant under his or their reſpective hand and ſeal, or hands and ſeals, for bringing any ſuch journeyman or ſervant before any ſuch juſtice or juſtices, or any juſtice of the county, city, riding, diviſion or place, where the offender can be found; and on any ſuch journeyman or ſervant being thereupon apprehended, and brought before any ſuch juſtice or juſtices, he or they, within their reſpective juriſdictions, is and are hereby authorized and required to examine into the matter of ſuch complaint; and on proof thereof being made upon oath to the ſatisfaction of any ſuch juſtice or juſtices who ſhall hear ſuch ſaid complaint, ſuch juſtice and juſtices is and are hereby directed and authorized by any order under his or their reſpective hand or hands, to adjudge and order what reaſonable ſum of money ſhall be paid by every ſuch journeyman or ſervant to his maſter or miſtreſs, as or by way of recompence to him or her for the money he or ſhe ſhall have paid, by reaſon of the wilful neglect or default of any ſuch journeyman or ſervant; and if any ſuch journeyman or ſervant ſhall neglect or refuſe on his conviction, to make immediate payment of the ſum of money which any ſuch juſtice or juſtices ſhall order to be paid, by reaſon of ſuch ſaid wilful neglect or default, then any ſuch juſtice and juſtices within their reſpective juriſdictions is and are hereby authorized and required by warrant under his hand and ſeal, or their hands and ſeals, to cauſe every ſuch journeyman or ſervant to be apprehended and committed to the houſe of correction, or ſome other priſon of the county, riding, diviſion, city, town, liberty or place, in which any ſuch journeyman or ſervant ſhall be apprehended, and there to be kept to hard labour, for any time not exceeding one calendar month from the time of ſuch commitment, as ſuch juſtice or juſtices ſhall order, unleſs payment ſhall be made of the money ordered to

Juſtice to iſſue his warrant out for bringing the offender before him;

and on conviction,

order a ſum to be paid by way of ſatisfaction;

and on non-payment thereof,

is to commit ſuch ſervant to hard labour, for any time not exceeding one month;

unleſs payment be ſooner made.

to be paid after such commitment, and before the expiration of the said calendar month.

Sect. 14. "And for the better and more easy recovery of the several penalties and forfeitures to be incurred by disobedience to this act and the powers herein contained, be it further enacted by the authority aforesaid, That it shall and may be lawful to and for the justices of the peace, or any one of them, within their respective counties, ridings, divisions, cities, towns corporate, boroughs, liberties or jurisdictions, to hear and determine, in a summary way, all offences committed against the true intent and meaning of this act; and, for that purpose, to summon before them, or any of them, within their respective jurisdictions, any party or parties accused of being an offender or offenders against the true intent and meaning of this act; and in case the party accused shall not appear on such summons, or offer some reasonable excuse for his default, then upon oath of any credible witness of any offence committed contrary to the true intent and meaning of this act, any such justice or justices shall issue his or their warrant or warrants for apprehending the offender or offenders within the jurisdiction of any such justice or justices; and upon the appearance of the party or parties accused, or in case he, she or they shall not appear, on notice being given to, or left for, him, her or them, at his, her or their usual place of abode, or if he, she or they cannot be apprehended, on a warrant granted against him, her or them, as herein before is directed; then, and in any such case, any such justice or justices is and are hereby authorized and required to proceed to make enquiry touching the matters complained of, and to examine any witness or witnesses who shall be offered on either side, on oath as aforesaid, and which oath every such justice and justices is and are hereby authorized, impowered, and required to administer; and after hearing of the parties who shall appear, and the witnesses who shall be offered on either side, such justice or justices shall convict or acquit the party or parties accused: and if the penalty or money forfeited on any such conviction shall not be paid within the space of twenty-four hours after any such conviction, every such justice or justices shall thereupon issue a warrant or warrants under his hand and seal, or their hands and seals respectively, directed to any peace officer or officers within their respective jurisdictions, and thereby require him or them to make distress of the goods or chattels of the offender or offenders within such their respective jurisdictions, to satisfy such penalty or money forfeited, and the costs of the prosecution and distress: and if any offender shall convey away his or her goods out of the jurisdiction of any such justice or justices before whom he or she was convicted, or so much thereof that the penalty or money forfeited cannot be levied, then some justice within whose jurisdiction the offender shall have removed his or her goods, shall back the warrant granted by any justice or justices as aforesaid, and thereupon the penalty forfeited shall be levied on the offender's goods and chattels, by distress and sale thereof; and if within five days from the distress being taken, the penalty or money forfeited and costs as aforesaid, shall not be paid, the goods seized or taken shall be appraised and

Justices to hear and determine all offences against this act in a summary way.

and the penalties to be paid within 24 hours after conviction; or to be levied by distress and sale.

Warrant of distress may be backed.

Distress to be sold within 5 days;

and ſold, tendering the overplus (if any) after deducting the penalty or forfeiture, and the coſts and charges of the proſecution, diſtreſs and ſale, to the owner or owners thereof; which charges ſhall be aſcertained by the juſtice or juſtices before whom any ſuch offender or offenders ſhall have been ſo convicted, or by the juſtice who backed the warrant (if either of them ſhall continue alive), and if not, by ſome other juſtice of the county, riding, diviſion, city or place, in which the offender ſhall have been convicted, on application for that purpoſe to be made to any ſuch juſtice; and for want of ſuch diſtreſs, then every ſuch juſtice, within whoſe reſpective juriſdiction any ſuch offender or offenders ſhall reſide or be, ſhall, on the application of any proſecutor or proſecutors, and proof on oath made of the conviction and nonpayment of the penalty and charges, by warrant under his hand and ſeal, commit every ſuch offender or offenders to the common gaol or houſe of correction of the county, riding, diviſion, city, liberty or place, where ſuch offender or offenders ſhall be found, there to remain for the ſpace of one calendar month from the time of ſuch commitment, unleſs after ſuch commitment payment ſhall be made of the penalty or money forfeited, and the coſts and charges aſcertained as aforeſaid, before the expiration of the ſaid one calendar month.

and all charges to be deducted thereout.

For want of ſufficient diſtreſs, the offender to be committed.

Sect. 15. " And be it further enacted by the authority aforeſaid, That the juſtice or juſtices, before whom any perſon ſhall be convicted in that part of *Great Britain* called *England*, in manner preſcribed by this act, ſhall cauſe every ſuch reſpective conviction to be drawn up in the form or to the effect following; that is to ſay,

Form following to be obſerved in convictions in England.

(*To wit*) BE *it remembered, That on this day of in the year of the reign of* A. B. *is convicted before majeſty's juſtices of the peace for the ſaid county of or for the or for the city, liberty, or town of* (as the caſe ſhall happen to be) *for and do adjudge* (*him, her, or them*, as the caſe ſhall be) *to pay and forfeit for the ſame, the ſum of*

Given under the day and year aforeſaid.

Sect. 16. " And be it further enacted by the authority aforeſaid, That in caſe any perſon or perſons ſhall be convicted of any offence againſt this act, before any juſtice or juſtices of the peace in that part of *Great Britain* called *Scotland*, every ſuch conviction ſhall proceed and be drawn up in the form commonly uſed and practiſed before ſuch juſtices of the peace, on convictions for other offences of the like nature.

Form in Scotland to be as for other offences of the like nature.

Sect. 17. " And be it further enacted by the authority aforeſaid, That no *certiorari*, letters of advocation, or of ſuſpenſion, ſhall be granted to remove any conviction, or other proceedings had thereon in purſuance of this act.

No conviction, &c. removable by *certiorari*.

Sect. 18. " Provided always, and be it further enacted by the authority aforeſaid, That if any perſon convicted of any offence puniſhable by this

Perſons aggrieved by the judgment of a juſtice, may

appeal to the quarter-seſſions;

this act, ſhall think him, her or themſelves aggrieved by the judgment of any juſtice or juſtices before whom he, ſhe or they ſhall have been convicted, ſuch perſon ſhall have liberty, from time to time, to appeal to the juſtices at the next general or general quarter-ſeſſions of the peace which ſhall be held for the county, riding, diviſion, city, liberty, town or place, where ſuch judgment ſhall have been given; and that the execution of the ſaid judgment ſhall, in ſuch caſe, be ſuſpended; the perſon ſo convicted entering into a recognizance at the time of ſuch conviction, with two ſufficient ſureties, in double the ſum which ſuch perſon ſhall have been adjudged to pay or forfeit, upon condition to proſecute ſuch appeal with effect, and to be forthcoming, to abide the judgment and determination of the juſtices at their ſaid next general or general quarter-ſeſſion; which recognizance the juſtice or juſtices, before whom ſuch conviction ſhall be had, is and are hereby impowered and required to take; and the juſtices in the ſaid general or general quarter-ſeſſion are hereby authorized and required to hear and finally determine the matter of every ſuch appeal, and to award ſuch coſts as to them ſhall appear juſt and reaſonable to be paid by either party; and if, upon hearing the ſaid appeal, the judgment of the juſtice or juſtices, before whom the appellant or appellants ſhall have been convicted, ſhall be affirmed, ſuch appellant or appellants ſhall immediately pay down the ſum he, ſhe or they ſhall have been adjudged to forfeit, together with ſuch coſts as the juſtices in their ſaid general or general quarter-ſeſſion ſhall award to be paid to the proſecutor or informer for defraying the expences ſuſtained by reaſon of any ſuch appeal; and in default of the appellant's paying the ſame, any juſtice or juſtices having juriſdiction in the place into which any ſuch appellant or appellants ſhall eſcape, or where he, ſhe or they ſhall reſide, ſhall and may, by warrant under their hands and ſeals, or his hand and ſeal, commit every ſuch appellant and appellants to the common gaol of the county, riding, diviſion, liberty, city, town or place, where he, ſhe or they ſhall be apprehended, there to remain, until he, ſhe or they ſhall pay the penalty or money forfeited and coſts as aforeſaid, or ſhall compound in reſpect thereof with the informer, and pay the compoſition-money agreed on to the informer; but if the appellant or appellants in any ſuch appeal ſhall make good his, her or their appeal, and be diſcharged of the ſaid conviction, reaſonable coſts ſhall be awarded to the appellant or appellants, againſt ſuch informer or informers, who (in caſe of ſuch conviction having been affirmed) would have been intitled to the penalty to have been recovered as aforeſaid; and which coſts ſhall and may be recovered by the appellant or appellants againſt any ſuch informer or informers, in like manner as coſts given at any general or general quarter-ſeſſion of the peace are recoverable.

entering into a recognizance, with ſureties to proſecute the appeal.

Juſtices at the quarter-ſeſſions to hear and determine the matter of ſuch appeal, and award coſts.

On the appeal being affirmed, the appellant may be committed till payment of the coſts,

or compoſition be made.

If the appellant make good his appeal, reaſonable coſts to be awarded him.

Sect. 19. "Provided always, and be it further enacted by the authority aforeſaid, That if any ſuch conviction ſhall happen to be made within ſix days before any general or general quarter-ſeſſion of the peace, which ſhall be held for the county, riding, diviſion, city, town corporate, borough or place, where ſuch conviction ſhall have been made; then the

Where there is not ſufficient time between the conviction and

party or parties who ſhall think him, her or themſelves aggrieved by any ſuch conviction, ſhall and may, on entering into a recognizance in manner and for the purpoſes before directed, be at liberty to appeal, either to the then next, or the next following general or general quarter-ſeſſion of the peace which ſhall be held for any ſuch county, riding, diviſion, city, town corporate, borough, liberty or place, where any ſuch conviction ſhall have been made.

Seſſions, appeal may be made to the 2d quarter-ſeſſion.

Sect. 20. " And be it further enacted by the authority aforeſaid, That every action or ſuit which ſhall be brought or commenced againſt any juſtice or juſtices, or any peace officer or officers in that part of *Great Britain* called *England*, for any matter or thing done or committed by virtue of or under this act, ſhall be commenced within ſix calendar months next after the fact committed, and not afterwards, and ſhall be laid or brought in the county, city or place, where the matter in diſpute ſhall ariſe, and not elſewhere; and that the ſtatute made in the twenty-fourth year of king *George* the ſecond, intituled, *An act for rendering the juſtices of the peace more ſafe in the execution of their office; and for indemnifying conſtables, and others, acting in obedience to their warrants*; ſo far as the ſaid act relates to the rendering the juſtices more ſafe in the execution of their office, ſhall extend, and be conſtrued to extend, to the juſtice or juſtices of the peace acting under the authority or in purſuance of this act; and that no action or ſuit ſhall be had or commenced againſt, nor ſhall any writ be ſued out, or copy of any writ be ſerved upon any peace officer or officers, for any thing done in the execution of this act, until ſeven days after a notice in writing ſhall have been given to, or left for him or them, at his or their uſual place of abode, by the attorney for the party intending to commence ſuch action; which notice ſhall contain the name and place of abode of the perſon intending to bring ſuch action, and alſo of his attorney, and likewiſe the cauſe of action or complaint; and any peace officer or officers ſhall be at liberty, and may by virtue of this act, at any time within ſeven days after any ſuch notice ſhall have been given to or left for him, tender, or cauſe to be tendered any ſum or ſums of money, as amends for the injury complained of, to the party complaining, or to the attorney named in any ſuch notice; and, if the ſame is not accepted of, the defendant or defendants in any ſuch action or actions may plead ſuch tender in bar of ſuch action or actions, together with the general iſſue, or any other plea, with leave of the court in which the action ſhall be commenced: and if, upon iſſue joined on ſuch tender, the jury ſhall find the amends tendered to have been ſufficient, they ſhall find a verdict for the defendant or defendants: and in every ſuch caſe, or if the plaintiff ſhall become nonſuit, or diſcontinue his action; or if judgment ſhall be given for the defendant or defendants upon demurrer; or if any action or ſuit ſhall be brought after the time limited by this act for bringing the ſame, or ſhall be brought in any other county or place than as aforeſaid; then, and in every ſuch caſe, the jury ſhall find a verdict for the defendant or defendants; and the defendant or defendants ſhall be intitled to his or their coſts: but if the jury ſhall find that no ſuch tender was made, or that the amends tendered were not

Limitation of actions brought againſt juſtices and peace officers.

Act 24 G. II. extended to juſtices acting under this act.

Notice to be given to peace officers, before any writ be ſued out againſt them;

and if tender of amends be made by them,

and the ſame ſhall be found to have been ſufficient, &c. a verdict to be found for them, with coſts.

Plaintiff recovering, intitled to damages and coſts.

not ſufficient, or ſhall find a verdict againſt the defendant or defendants, on any plea or pleas by him or them pleaded; then they ſhall give a verdict for the plaintiff, and ſuch damages, as they ſhall think proper; and the plaintiff ſhall thereupon recover his or her coſts, againſt every ſuch defendant and defendants.

Limitation of other actions.

Sect. 21. "And be it further enacted by the authority aforeſaid, That if any action or ſuit ſhall be commenced againſt any other perſon or perſons than a juſtice or juſtices, or peace officer, for any thing done in purſuance of this act, the defendant or defendants in any ſuch action or ſuit

General iſſue.

may plead the general iſſue, and give this act, and the ſpecial matter, in evidence at any trial to be had thereupon; and that the ſame was done in purſuance and by the authority of this act; and if it ſhall appear ſo to have been done, or if a verdict ſhall be found for the defendant or defendants; or if the plaintiff ſhall be nonſuited, or diſcontinue his action, after the defendant or defendants ſhall have appeared; or if judgment ſhall be given upon a verdict or demurrer againſt the plaintiff or plaintiffs, the

Double coſts.

defendant or defendants in every ſuch action ſhall and may recover double coſts, and have the like remedy for the ſame, as any defendant or defendants hath or have in other caſes by law for recovery of his or their coſts.

Limitations and remedies for rendering juſtices, peace officers, and other perſons, ſafe in their duty, extended to Scotland.

Sect. 22. "And be it enacted by the authority aforeſaid, That the above limitations and remedies for rendering juſtices of peace, peace officers, and all other perſons, ſafe in the execution of their ſeveral offices under this act, ſhall extend to and be available to all ſuch juſtices of peace, peace officers, and other perſons in that part of *Great Britain* called *Scotland*; and ſhall be pleaded by them, and ſuſtained by the court or courts before which they, or any of them may happen to be ſued, according to the forms of the law of *Scotland*.

Limitation of proſecutions for offences againſt this act.

Sect. 23. "Provided alſo, and be it likewiſe enacted by the authority aforeſaid, That no perſon ſhall be convicted of any offence under this act, unleſs the proſecution in order for ſuch conviction ſhall be commenced within three days after the offence committed; and that no perſon, who ſhall be proſecuted to conviction for any offence done or committed againſt this act, ſhall be ſubject or liable to be proſecuted for the ſame offence under any other law.

Penalties and forfeitures how to be recovered and applied.

Sect. 24. "And be it further enacted by the authority aforeſaid, That all penalties and forfeitures by this act inflicted ſhall, when recovered or paid, go and be diſtributed in manner following; that is to ſay, one moiety thereof, where any offender or offenders ſhall be convicted, either by his, her or their own confeſſion, or by the oath of one or more credible witneſs or witneſſes, ſhall go and be paid to the perſon or perſons who ſhall inform againſt and proſecute to conviction any ſuch offender or offenders; and the other moiety thereof as the juſtice or juſtices, before whom any offender or offenders againſt this act ſhall be convicted, ſhall from time to time think fit and order, for the better carrying into execution the purpoſes of this act, and defraying the charges attending the carrying the ſame into execution.

Sect. 25. "Provided likewiſe, and it is hereby enacted, That this act, or any thing herein contained, ſhall not extend, or be conſtrued to extend, to prejudice the ancient right or cuſtom of the two univerſities of *Oxford* or *Cambridge*, or either of them, or of their or either of their clerks of the market, or the practice within the ſeveral juriſdictions of the ſaid univerſities, or either of them, uſed, to aſcertain and appoint the weight of all ſorts of bread to be ſold or expoſed to ſale within their ſeveral juriſdictions; but that they, and every of them, ſhall and may, ſeverally and reſpectively, from time to time, as there ſhall be occaſion, aſcertain and appoint within their ſeveral and reſpective juriſdictions, the weight of all ſorts of bread to be ſold or expoſed to ſale by any baker or other perſon whatſoever, within the limits of their ſeveral juriſdictions; and ſhall and may puniſh the breach thereof as fully and freely, in all reſpects, as they uſed to do, and as if this act had never been made; any thing herein contained to the contrary thereof in any wiſe notwithſtanding." Rights of the two univerſities reſerved.

Brewers.

STATUTE 2 & 3 *Ed.* 6. *c.* 15. [*A. D.* 1548. *intituled*] "The bill of conſpiracies of Victuallers and craftſmen."

Foraſmuch as of late divers ſellers of victuals, not contented with moderate and reaſonable gain, but minding to have and to take for their victuals ſo much as luſt them, have conſpired and covenanted together to ſell their victuals at unreaſonable prices: (2) And likewiſe arificers, handicraftſmen and labourers, have made confederacies and promiſes, and have ſworn mutual oaths, not only that they ſhould not meddle one with others work, and perform and finiſh that another hath begun, but alſo to conſtitute and appoint how much work they ſhall do in a day, and what hours and times they ſhall work, contrary to the laws and ſtatutes of this realm, and to the great hurt and impoveriſhment of the king's majeſty's ſubjects: (3) For reformation thereof, it is ordained and enacted by the king our ſovereign lord, the lords and commons, in this preſent parliament aſſembled, and by the authority of the ſame; That if any butchers, brewers, bakers, poulterers, cooks, coſtermongers or fruiterers, ſhall, at any time from and after the firſt day of *March* next coming, conſpire, covenant, promiſe or make any oaths, that they ſhall not ſell their victuals but at certain prices; (4) or if any artificers, workmen or labourers, do conſpire, covenant or promiſe together, or make any oaths, that they ſhall not make or do their works, but at a certain price or rate, or ſhall not enterpriſe or take upon them to finiſh that another hath begun, or ſhall do but a certain work in a day, or ſhall not work but at certain hours and times; (5) That then every perſon ſo conſpiring, covenanting, ſwearing or offending, being lawfully convict

Victuallers conſpiring to ſell their victuals but at certain prices, and labourers conſpiring touching their works, ſhall be puniſhed.

The puniſhments of the labourers conſpiring the time or manner of their work. 5 El. c. 4.

convict thereof by witneſs, confeſſion, or otherwiſe, ſhall forfeit for the firſt offence ten pound to the king's highneſs, and if he have ſufficient to pay the ſame, and do alſo pay the ſame within ſix days next after his conviction; or elſe ſhall ſuffer for the ſame offence twenty days impriſonment, and ſhall only have bread and water for his ſuſtenance: (6) And for the ſecond offence ſhall forfeit twenty pound to the king, if he have ſufficient to pay the ſame, and do pay the ſame within ſix days next after his conviction; or elſe ſhall ſuffer for the ſecond offence puniſhment of the pillory. (7) And for the third offence ſhall forfeit forty pound to the king, if he have ſufficient to pay the ſame, and alſo do pay the ſame within ſix days next after his conviction; or elſe ſhall ſit on the pillory, and loſe one of his ears, and alſo ſhall at all times after that be taken as a man infamous, and his ſaying, depoſitions or oath not to be credited at any time in any matters of judgment."

A conſpiracy by a ſociety or company of victuallers.

Sect. 2. And if it fortune any ſuch conſpiracy, covenant or promiſe to be had and made by any ſociety, brotherhood or company of any craft, myſtery or occupation of the victuallers above mentioned, with the preſence or conſent of the more part of them, that then immediately upon ſuch act of conſpiracy, covenant or promiſe, had or made, over and beſides the particular puniſhment before in this act appointed for the offender, their corporation ſhall be diſſolved to all intents, conſtructions and purpoſes."

Which magiſtrates may inquire of and puniſh offenders.

Sect. 3. "And it is further ordained and enacted by the authority aforeſaid, That all and ſingular juſtices of aſſize, juſtices of peace, mayors, bailiffs, and ſtewards of leets, at all and every their ſeſſions, leets and courts, ſhall have full power and authority to inquire, hear and determine all and ſingular offences committed againſt this ſtatute, and to puniſh, or cauſe to be puniſhed the offender, according to the tenor of this ſtatute."

Stat. 2 *Geo.* 3. *c.* 14. [*A. D.* 1761.] *Made among other purpoſes*, "to prevent vexatious proceedings againſt brewers, victuallers, and others, with reſpect to the prices of beer and ale."

Preamble.

Whereas brewers, inn-keepers, victuallers, or other retailers of ſtrong beer or ale, have been threatened with, and may be ſubject to, vexatious proſecutions for advancing, or having advanced, the price of ſtrong beer or ale, however juſtly and reaſonably: now, in order to prevent ſuch vexatious proceedings, may it pleaſe your moſt excellent majeſty, that it may be enacted; and Be it therefore further enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That no brewer, inn-keeper, victualler, or other retailer of ſtrong beer or ale ſhall, at any time hereafter, be ſued, impleaded, or moleſted, by indictment, information, popular action, or otherwiſe, for advancing, or having advanced, the price of ſtrong beer or ale in a reaſonable degree; any law or ſtatute to the contrary notwithſtanding."

The price of ſtrong beer and ale may be reaſonably advanced without ſubjecting the vender to proſecution.

Stat.

Stat. 1 *Will. & M. c.* 24. [*A. D.* 1688. *intituled*] "An act for an additional duty upon beer, ale, and other liquors."

Sect. 17. "And be it further enacted by the authority aforesaid, That, from and after the first of *September* one thousand six hundred eighty-nine, no common brewer, or retailer of beer or ale, shall use in the brewing or working of any beer or ale any mellasses, coarse sugar, honey, or composition or extract of sugar, upon the penalty of the forfeiture, for every such offence, of all such liquors wherein any mellasses, or coarse sugar, honey, or such composition or extract shall be put, and also of the sum of one hundred pounds; one moiety of all the said forfeitures to be to their majesties, the other moiety to the informer, to be recovered by action of debt, bill, plaint or information, in any of their majesties courts of record, wherein no essoign, wager of law, or any more than one imparlance shall be allowed, so as such suit be commenced within six months after such forfeiture incurred." 100l. penalty for using mellasses in brewing.

Stat. 10 & 11 *Will.* 3. *c.* 21. [*A. D.* 1699] *made, among other purposes,* "for preventing of abuses in the brewing of beer and ale."

Sect. 34. And whereas it is found by experience, That notwithstanding any law now in force, many common brewers do use great quantities of mellasses in the brewing ale and beer, whereby the consumption of malt is very much hindred, and his majesty defrauded of a great part of the duties of such ale and beer so brewed, as aforesaid: Be it therefore enacted by the authority aforesaid, That if any common brewer, or retailer of beer or ale, shall, after the said tenth day of *May* one thousand six hundred ninety-nine, make use of any mellasses, coarse sugar, honey, or composition or extract of sugar, in the brewing, making, or working of any ale or beer, or if any common brewer shall receive or take into his custody or possession any quantity of mellasses, coarse sugar, honey, or composition or extract of sugar, exceeding ten pounds, every such brewer and retailer shall forfeit and lose for every such offence respectively the sum of one hundred pounds; and every servant of such brewer, and every other person, who shall be aiding and assisting in the using any mellasses, coarse sugar, honey, or extract of sugar, in the brewing or working of such ale or beer, or in carrying or conveying the same into the house, brewhouse or other place belonging to such brewer, shall also forfeit and lose, for every such offence, the sum of twenty pounds, and in default of payment thereof shall suffer three months imprisonment." Penalty on brewer, using mellasses, &c. penalty on brewers servants.

Stat. 9 *Ann. c.* 12. [*A. D.* 2710. *intituled*] "An act for laying a duty upon hops."

Sect. 24. "And in regard it is found by experience, That hops used in the making of malt-drinks are more wholsome for those that drink or consume the same, and greater advantage to the drink itself, than any other bitter ingredient that can be used instead thereof, It is hereby further enacted Brewer, &c. not to use broom, &c. on pain of 20l.

enacted by the authority aforesaid, That during the continuance of this act, no common brewer, inn-keeper, or victualler, shall use any broom, wormwood, or any other bitter ingredient, (to serve instead of hops) in brewing or making any beer or ale to be brewed or made by him, her or them for sale in any part of *Great Britain*, under the penalty of forfeiting the sum of twenty pounds for every such offence; the infusing of broom or wormwood into beer or ale, by the retailer, after the same is brewed and tunned, to make the same broom or wormwood ale, or broom or wormwood beer, always excepted."

Exception.

Sect. 26. *Penalties to be recovered as by the laws of excise.*

And by *stat.* 12 *Ann. stat.* 1. *c.* 2. *sect.* 32. No common brewer, or retailer of beer or ale, shall use any sugar, honey, foreign grains, *Guinea* pepper, *essentia binæ*, *coculus indiæ*, or any unholsome ingredients in the brewing of beer or ale, or mix any of them therewith, on pain of 20 *l.* to be recovered and mitigated as by the laws of excise, half to the king, and half to him shall sue.

Stat. 24 *Geo.* 2. *c.* 40. [*A. D.* 1751.] *made, among other purposes,* "for granting to his majesty an additional duty upon spirituous liquors, "and upon licences for retailing the same."

Brewers, innkeepers, distillers or dealers in spirits, &c. not to act as justices relating to the distillery.

Sect. 22. "And be it further enacted by the authority aforesaid, That, from and after the said first day of *July* one thousand seven hundred and fifty-one, no person or persons whatsoever, being a common brewer of ale or beer, or innkeeper, distiller or other seller of or dealer in any kind of spirituous liquors, or who is, or are or shall be interested in any of the said trades or businesses, shall, during such time as he or they shall be such common brewer, innkeeper, distiller or other seller of or dealer in spirituous liquors, or interested in any of the said trades or businesses, be capable or have any power to act, or shall be directly or indirectly concerned in acting as a justice of the peace, in any matter or thing whatsoever, which shall any ways concern the execution of the powers or authorities given or granted by any act or acts of parliament, in any wise relating to distillers or makers of low wines, spirits or strong waters for sale, or to the duty or duties imposed upon low wines, spirits or strong waters, or any other kind of spirituous liquors whatsoever, or to the granting licences to the retailers of spirituous liquors."

And by stat. 26 *Geo.* 2. *c.* 13. *sect.* 12. *Brewers, who are justices of the peace, are prohibited from granting licences for selling ale, &c. See this section at large under title* **Alehouses**, *page* 25.

Indictment against a brewer for knowingly selling and delivering 16 gallons of amber beer as and for 18 gallons, and receiving the

Mr. *Norton*, for the prosecutor, shewed cause why judgment should not be arrested: A rule for that purpose having been obtained, upon a motion made by Mr. *Norton* on *Monday* 26th *January* last, in arrest of judgment upon this indictment for knowingly selling amber-beer short of the due and just measure (whereof the defendant had been convicted.) The charge in the indictment was, "That *Thomas Wheatly* late of the parish of St. *Luke* in the county of *Middlesex* brewer, being a person of evil name, fame and dishoneſt

diſhoneſt converſation, and *deviſing and intending to deceive and defraud one Richard Webb of his monies*, on *&c.* at *&c. falſely, fraudulently and deceitfully* did *ſell and deliver*, and cauſed to be ſold and delivered to the ſaid *Richard Webb* ſixteen gallons and no more of a certain malt liquor, commonly called amber, FOR AND AS eighteen gallons of the ſame liquor, which ſaid liquor ſo as aforeſaid ſold and delivered did then and there *want two gallons of the due and juſt meaſure of* eighteen *gallons*, FOR WHICH *the ſame was ſold and delivered* as aforeſaid, (the ſaid *Thomas Wheatly* then and there *well knowing* the ſame liquor ſo by him ſold and delivered, to want two gallons of the due and juſtmeaſure as aforeſaid;) And he the ſaid *Thomas Wheatly* did *receive* of the ſaid *Richard Webb* the ſum of fifteen *ſhillings*, *&c.* for eighteen gallons, *&c. pretended* to have been ſold and delivered, *&c.* although there were *only* ſixteen gallons ſo as aforeſaid delivered: And he the ſaid *Thomas Wheatly* him the ſaid *Richard Webb* of two gallons of *&c. fraudulently and unlawfully* did *deceive* and *defraud*, to the great damage and fraud of the ſaid *Richard Webb*, to the evil example of others in the like caſe offending, and againſt the peace of our ſovereign lord the king, his crown and dignity.

price for 18 gallons, with intent to deceive and defraud; judgment was arreſted; for this is not an offence indictable, but a civil injury to a private dividual, owing to that private perſon's own carleſneſs; a mere nonperformance of contract. 2 Bur. Rep. 1125-1130. Hil. 1 Geo. 3. Rex v. Wheatly.

Mr. *Morton* and Mr. *Yates*, who were of counſel for the defendant, (to arreſt the judgment,) objected that the fact charged was nothing more than a *mere breach of* a CIVIL CONTRACT, not an indictable offence. To prove this, they cited *Rex* v. *Combrun*, *P.* 1751, 24 *G.* 2. *B. R.* Which was exactly and punctually the ſame caſe as the preſent, only *mutatis mutandis*. And *Rex* v. *Driffield*, *Tr.* 1754, 27, 28 *G.* 2. *B. R. S. P.* An indictment for a cheat, for ſelling coals as and for Two buſhels, whereas it was a peck ſhort of that meaſure. There the indictment was quaſhed on motion. *Rex* v. *Hannah Heath*—An indictment for ſelling and delivering ſeventeen gallons three quarts and half a pint of *Geneva*, (and the like of brandy,) as and for a greater quantity, was quaſhed on motion. In 1 *Salk.* 151. *Nebuff's* caſe, *P.* 4 *Ann. B. R.* A *certiorari* was granted to remove the indictment from the *Old Bailey*, becauſe it was not a matter criminal. It was, "borrowing 600 *l.* and promiſing to ſend a pledge of fine cloth and gold duſt, and ſending only ſome coarſe cloth, and no gold duſt." In *Tremaine* *, title *Indictments for cheats*, — All of them either lay a *conſpiracy*, or ſhew ſomething amounting to a *falſe token*.

* Tremaine's Pleas of the crown, pa. 85 to 111.

A mere *civil wrong* will not ſupport an indictment. And here is no criminal charge: It is not alledged "That he uſed falſe meaſures." The proſecutor ſhould have examined and ſeen that it was the right and juſt quantity.

Mr. *Norton pro Rege* offered the following reaſons, why the judgment ſhould not be arreſted. The defendant has been *convicted* of the fact. He may bring a writ of error, if the indictment is erroneous. This is an *indictable offence*, it is a *cheat*, a *public fraud*, in the courſe of his *trade*: He is ſtated to be a *brewer*. There is a diſtinction between *private* frauds, and frauds in the *courſe of trade*. The ſame fact may be a ground for a private action, and for an indictment too. None of the cited caſes were *after verdict*. It *might* here (for ought that appears to the contrary) have been *proved*, "That he ſold this leſs quantity, by falſe meaſure." And every thing ſhall be *preſumed* in favour of a verdict. And here is a *falſe pretence*,

at leaſt: And it appeared upon the trial to be a very foul cauſe.—The counſel for the defendant, in reply, ſaid that nothing can be intended or *preſumed*, in a criminal caſe, but *ſecundum allegata et probata. It might* happen without his own *perſonal* knowledge. And they denied any diſtinction between this being done privately, and its being done in the courſe of trade.

Lord MANSFIELD——The queſtion is, Whether the fact here alledged be an *indictable* crime or not? The fact alledged is——(Then his lordſhip ſtated the charge, *verbatim.*) The argument that has been urged by the proſecutor's counſel, from the preſent caſe's coming before the court *after a verdict*, and the caſes cited being only of quaſhing upon motion *before* any verdict, really turns the other way: becauſe the court may uſe a *diſcretion*, "whether it be right to quaſh upon motion or put the defendant to demur;" but after verdict they are *obliged* to arreſt the judgment, if they ſee the charge to be inſufficient. And in a *criminal* charge, there is NO *latitude of intendment*, to include any thing *more* than is charged: the charge muſt be explicit enough to *ſupport itſelf.* Here the *fact* is allowed; but the conſequence is denied: the objection is, that the fact is *not an offence indictable*, though acknowledged to be true as charged. And that the fact here charged ſhould not be conſidered as an indictable offence, but left to a civil remedy by an action, is reaſonable and right in the nature of the thing: becauſe it is only an inconvenience and injury to a *private* perſon, ariſing from that private perſon's own negligence and *careleſsneſs* in not meaſuring the liquor, upon receiving it, to ſee whether it held out the juſt meaſure or not. The offence that is indictable muſt be ſuch a one as affects the PUBLIC. As if a man *uſes falſe weights and meaſures*, and ſells *by them* to all or to many of his cuſtomers, or uſes them in the general courſe of his dealing: ſo, if a man defrauds another, under *falſe tokens.* For theſe are deceptions that *common* care and prudence are not ſufficient to guard againſt. So, if there be a *conſpiracy* to cheat: for *ordinary* care and caution is no guard againſt this. Theſe caſes are much more than mere private injuries: they are *public offences.* But here, it is a mere *private* impoſition or deception: no falſe weights or meaſures are uſed; no falſe tokens given; no conſpiracy; only an impoſition upon the perſon he was dealing with, in delivering him a leſs quantity inſtead of a greater; which the other careleſsly accepted. 'Tis only a non-performance of his contract: for which non-performance, he may bring his action. The ſelling an unſound horſe, as and for a ſound one, is not indictable: the buyer ſhould be more upon his guard. The ſeveral caſes cited are alone ſufficient to prove, that the offence here charged is *not* an *indictable* offence. But beſides theſe, my brother *Deniſon* informs me of another caſe, that has not been mentioned at the bar. It was *M. 6 G.* 1. *B. R. Rex* v. *Wilders*, a brewer: he was indicted for a cheat, in ſending in, to Mr. *Hicks*, an alehouſe-keeper, ſo many veſſels of *ale* marked as containing ſuch a meaſure, and writing a *letter* to Mr. *Hicks*, aſſuring him that they did contain that meaſure; when in fact they did not contain ſuch meaſure, but ſo much leſs, *&c.* This indictment was quaſhed on argument,

argument, upon a motion: which is a ſtronger caſe than the preſent. Therefore the law is clearly eſtabliſhed and ſettled; and I think, on *right* grounds: but on whatever grounds it might have been originally eſtabliſhed, yet it ought to be adhered to, after it is eſtabliſhed and ſettled. Therefore (though I may be ſorry for it in the preſent caſe as circumſtanced;) the judgment muſt be arreſted.

Mr. juſtice *Deniſon* concurred with his lordſhip. This is nothing more than an action upon the caſe turned into an indictment. 'Tis a *private breach of contract.* And if this were to be allowed of, it would alter the courſe of the law; by making the injured perſon a *witneſs* upon the indictment, which he could not be (for himſelf) in an action. Here are no falſe weights, nor falſe meaſures; nor any falſe token at all; nor any conſpiracy. In the caſe of *The Queen* v. *Maccarty et al'* (6 *Mod.* 301.) there were falſe tokens, or what was conſidered as ſuch. In the caſe of *The Queen* v. *Jones*, 1 *Salk.* 379. (2 Lord *Raym.* 1013. and 6 *Mod.* 105. *S. C.*) the defendant had received 20*l.* pretending to be ſent by one who did not ſend him——*Et per cur.* "It is not indictable, unleſs he came with falſe tokens: We are not to indict one man for making a fool of another; let him bring his action." If there were *falſe tokens* or a *conſpiracy*, it is another caſe. *The Queen* v. *Maccarty* was a conſpiracy, as well as falſe tokens. *Rex* v. *Wilders* was a much ſtronger caſe than this; and was well conſidered: that was an impoſition in the *courſe of his trade*; and the man had *marked* the veſſels, as containing more gallons than they did really contain, and had written a *letter* to Mr. *Hicks*, atteſting that they did ſo. But the preſent caſe is no more than a *mere breach of contract:* he has not delivered the quantity which he undertook to deliver. The court uſe a *diſcretion* in quaſhing indictments on *motion:* but they are *obliged to arreſt judgment* when the matter is *not indictable.* And *this* matter is *not* indictable: therefore the judgment ought to be *arreſted.*

Mr. juſtice *Foſter:*——We are obliged to follow ſettled and eſtabliſhed rules already fixed by former determinations in caſes of the ſame kind. The caſe of *Rex* v. *Wilders* was a ſtrong caſe; (too ſtrong perhaps; for there were falſe tokens, the veſſels were marked as containing a greater quantity than they really did.)

Mr. juſtice *Wilmot* concurred. This matter has been fully ſettled and eſtabliſhed, and upon a reaſonable foot. The true diſtinction that ought to be attended to in all caſes of this kind, and which will ſolve them all, is this——That in ſuch impoſitions or deceits, where common prudence may guard perſons againſt their ſuffering from them, the offence is not indictable, but the party is left to his civil remedy for the redreſs of the injury that has been done him: but where falſe weights and meaſures are uſed, or falſe tokens produced, or ſuch methods taken to cheat and deceive, as people cannot, by any ordinary care or prudence be guarded againſt, there it is an offence indictable. In the caſe of *Rex* v. *Pinkney*, *P. 6 Geo. B. R.* upon an indictment "for ſelling a ſack of corn (at *Rippon* market) which he falſely affirmed to contain a *Wincheſter* buſhel, *ubi revera et in facto plurimùm deficiebat, &c.*" The indictment was quaſhed upon

upon motion. In the caſe now before us, the proſecutor might have meaſured the liquor, before he accepted it: and it was his own indolence and negligence if he did not. Therefore common prudence might have guarded him againſt ſuffering any inconvenience by the defendant's offering him leſs than he had contracted for. This was the caſe of *Rex* v. *Pinkney:* and it was there ſaid, that if a ſhop-keeper who deals in cloth, pretends to ſell ten yards of cloth, but inſtead of ten yards bought of him, delivers only ſix, yet the buyer cannot indict him for delivering only ſix; becauſe he might have meaſured it, and ſeen whether it held out as it ought to do, or not. In this caſe of *Rex* v. *Pinkney*; and alſo in that caſe of *Rex* v. *Combrum*, a caſe of *Rex* v. *Nicholſon*, at the ſittings before lord *Raymond* after *Michaelmas* term, 4 *Geo.* was mentioned; which was an indictment for ſelling ſix chaldron of coals, which ought to contain thirty-ſix buſhels each, and delivering ſix buſhels ſhort: lord *Raymond* was ſo clear in it, that he ordered the defendant to be acquitted. *Per cur.* unanimouſly, The judgment muſt be arreſted.

Bribery.

BRIBERY in a ſtrict ſenſe is taken for a great miſpriſion of one in a judicial place, taking any valuable thing whatſoever, except meat and drink of ſmall value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the King only. 1 *Hawk. P. C.* 168. 3 *Inſt.* 145.

But bribery in a large ſenſe is ſometimes taken for the receiving or offering of any undue reward, by or to any perſon whatſoever, whoſe ordinary profeſſion or buſineſs relates to the adminiſtration of public juſtice, in order to incline him to do a thing againſt the known rules of honeſty and integrity; for the law abhors any the leaſt tendency to corruption in thoſe who are any way concerned in its adminiſtration, and will not endure their taking a reward for the doing a thing which deſerves the ſevereſt of puniſhments. 1 *Hawk. P. C.* 168.

Alſo bribery ſometimes ſignifies the taking or giving of a reward for offices of a public nature; and ſurely nothing can be more palpably prejudicial to the good of the public, than to have places of the higheſt concernment, on the due execution whereof the happineſs of both king and people doth depend, diſpoſed of not to thoſe who are moſt able to execute them, but to thoſe who are moſt able to pay for them; nor can any thing be a greater diſcouragement to induſtry and virtue, than to ſee thoſe places of truſt and honour, which ought to be the rewards of thoſe who by their induſtry and diligence have qualified themſelves for them, conferred on ſuch who have no other recommendation but that of being the higheſt bidders: neither can any thing be a greater temptation to officers to abuſe their power by bribery and extortion, and other acts of injuſtice, than the

conſideration

conſideration of the great expence they were at in gaining their places, and the neceſſity of ſometimes ſtraining a point to make their bargain anſwer their expectation; for which reaſons among many others, it is expreſly enacted as follows by 12 *Rich.* 2. 1 *Hawk. P. C.* 169.

Stat. 12 *Ric.* 2. *c.* 2. [*A. D.* 1388. *intituled*] "None ſhall obtain offices by ſuit, or for reward, but upon deſert."

Item it is accorded, That the chancellor, treaſurer, keeper of the privy ſeal, ſteward of the king's houſe, the king's chamberlain, clerk of the rolls, the juſtices of the one bench and of the other, barons of the exchequer, and all other that ſhall be called to ordain, name, or make juſtices of peace, ſheriffs, eſcheators, cuſtomers, comptrollers, or any other officer or miniſter of the king, ſhall be firmly ſworn, that they ſhall not ordain, name, or make juſtice of peace, ſheriff, eſcheator, cuſtomer, comptroller, nor other officer nor miniſter of the king, for any gift or brocage, favour or affection; (2) nor that none which purſueth by him, or by other, privily or openly, to be in any manner office, ſhall be put in the ſame office, or in any other; (3) but that they make all ſuch officers and miniſters of the beſt and moſt lawful men, and ſufficient to their eſtimation and knowledge." 5 & 6 Ed. 6. c. 16.

For the expoſition of this act of 12 Rich. 2. *ſee the trial of the earl of* Macclesfield.

Stat. 5 & 6 *Ed.* 6. *c.* 16. [*A. D.* 1552. *intituled*] "Againſt buying and ſelling of offices."

"For the avoiding of corruption which may hereafter happen to be in the officers and miniſters in thoſe courts, places or rooms wherein there is requiſite to be had the true adminiſtration of juſtice, or ſervices of truſt; (2) and to the intent that perſons worthy and meet to be advanced to the place where juſtice is to be miniſtred, or any ſervice of truſt executed, ſhould hereafter be preferred to the ſame, and no other: The penalty for buying or ſelling ſome ſort of offices. 3 Bulſtr. 91. 1 Roll 157, 236. 2 Salk. 468. 3 Lev. 289.

Sect. 2. "Be it therefore enacted by the king our ſovereign lord, the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons at any time hereafter bargain or ſell any office or offices, or deputation of any office or offices, or any part or parcel of any of them, (2) or receive, have or take any money, fee, reward, or any other profit directly or indirectly, (3) or take any promiſe, agreement, covenant, bond, or any aſſurance to receive or have any money, fee, reward or other profit, directly or indirectly, for any office or offices, or for the deputation of any office or offices, or any part of any of them; (4) or to the intent that any perſon ſhould have, exerciſe or enjoy any office or offices, or the deputation of any office or offices, or any part of any of them; (5) which office or offices, or any part or parcel of them, ſhall in any wiſe touch or concern the adminiſtration or execution of juſtice; (6) or the receipt, comptrolment or payment of any of the king's highneſs treaſure, money, rent, Hob. 75. Cro. Jac. 269.

revenue, account, aulnage, auditorſhip, or ſurveying of any of the king's majeſty's honours, caſtles, manors, lands, tenements, woods or hereditaments; (7) or any of the king's majeſty's cuſtoms, or any adminiſtration or neceſſary attendance to be had, done, or executed in any of the king's majeſty's cuſtom-houſe or houſes; (8) or the keeping of any of the king's majeſty's towns, caſtles or fortreſſes, being uſed, occupied or appointed for a place of ſtrength and defence; (9) or which ſhall concern or touch any clerkſhip to be occupied in any manner of court of record wherein juſtice is to be miniſtred; (10) That then all and every ſuch perſon and perſons, that ſhall ſo bargain or ſell any of the ſaid office or offices, deputation or deputations, or that ſhall take any money, fee, reward or profit for any of the ſaid office or offices, deputation or deputations of any of the ſaid offices, or any part of any of them, or that ſhall take any promiſe, covenant, bond, or aſſurance for any money, reward or profit to be given for any of the ſaid office or offices, deputation or deputations of any of the ſaid office or offices, or any part of any of them, ſhall not only loſe and forfeit all his and their right, intereſt and eſtate which ſuch perſon or perſons ſhall then have, of, in or to any of the ſaid office or offices, deputation or deputations, or any part of any of them, or of, in or to the gift or nomination of any of the ſaid office or offices, deputation or deputations, for the which office or offices, or for the deputation or deputations of which office or offices, or for any part of any of them, any ſuch perſons ſhall ſo make any bargain or ſale, or take or receive any ſum of money, fee, reward or profit, or any promiſe, covenant, bond or aſſurance to have or receive any fee, reward, money or profit: (11) But alſo that all and every ſuch perſon or perſons, that ſhall give or pay any ſum of money, reward or fee, or ſhall make any promiſe, agreement, bond or aſſurance for any of the ſaid offices, or for the deputation or deputations of any of the ſaid office or offices, or any part of any of them, ſhall immediately by and upon the ſame fee, money or reward given or paid, or upon any ſuch promiſe, covenant, bond or agreement had or made, for any fee, ſum of money or reward to be paid, as is aforeſaid, be adjudged a diſabled perſon in the law, to all intents and purpoſes, to have, occupy or enjoy the ſaid office or offices, deputation or deputations, or any part of any of them, for the which ſuch perſon or perſons ſhall ſo give or pay any ſum of money, fee or reward, or make any promiſe, covenant, bond or other aſſurance, to give or pay any ſum of money, fee or reward.

The bargains and aſſurances ſhall be void. Cro. El. 529. Stiles 29.

Sect. 3. "And be it alſo enacted by the authority aforeſaid, That all and every ſuch bargains, ſales, promiſes, bonds, agreements, covenants and aſſurances as be before ſpecified, ſhall be void, to and againſt him and them by whom any ſuch bargain, ſale, bond, promiſe, covenant or aſſurance ſhall be had or made.

To what offices this ſtatute ſhall not extend.

Sect. 4. "Provided always, That this act, or any thing therein contained, ſhall not in any wiſe extend to any office or offices, whereof any perſon or perſons is or ſhall be ſeiſed of any eſtate of inheritance; (2) nor to any office of parkerſhip, or of the keeping of any park, houſe, manor, garden,

garden, chaſe or foreſt, or to any of them; any thing in this act heretofore mentioned to the contrary thereof in any wiſe notwithſtanding.

Sect. 5. "Provided alſo, That if any perſon or perſons do hereafter offend in any thing contrary to the tenor and effect of this act, yet that notwithſtanding, all judgments given, and all other act and acts executed or done, by any ſuch perſon or perſons ſo offending by authority or colour of the office or deputation which ought to be forfeited, or not occupied, or not enjoyed by the perſon ſo offending as is aforeſaid, after the ſaid offence ſo by ſuch perſon committed or done, and before ſuch perſon ſo offending, for the ſame offence be removed from the exerciſe, adminiſtration and occupation of the ſaid office or deputation, ſhall be and remain good and ſufficient in law, to all intents, conſtructions and purpoſes, in ſuch like manner and form as the ſame ſhould or ought to have remained and been, if this act had never been had or made.

Acts done by an officer removable, ſhall be good.

Sect. 6. "Provided alſo, That this act or any thing therein contained, ſhall not in any wiſe extend to any bargain, ſale, gift, grant, nomination, bond, covenant, promiſe, agreement, or aſſurance, whatſoever it be, of, or for any the office or offices, deputation or deputations aforeſaid, or any part of any of them had, made, done, concluded or agreed before the firſt day of *March* next coming, but that the ſame bargain, ſale, gift, grant, nomination, bond, covenant, promiſe, agreement or aſſurance had, made, *done*, concluded or agreed before the ſaid firſt day of *March*, ſhall always remain, continue and be in ſuch force, ſtrength and effect, as if this act had never been had or made; any thing before in this act mentioned to the contrary thereof in any wiſe notwithſtanding.

A bargain for an office before the firſt day of March, *&c.*

Sect. 7. "Provided always, and be it enacted by the authority aforeſaid, That this act, or any thing therein contained, ſhall not in any wiſe extend or be prejudicial or hurtful to any of the chief juſtices of the king's courts, commonly called the *King's Bench* or *Common Place*, or to any of the juſtices of aſſiſe that now be, or hereafter ſhall be, but that they and every of them may do in every behalf, touching or concerning any office or offices to be given or granted by them or any of them, as they or any of them might have done before the making of this act; any thing above mentioned to the contrary in any wiſe notwithſtanding."

Offices given by the two chief juſtices, or juſtices of aſſiſe.

In the conſtruction of this ſtatute of 5 and 6 *Edw.* 6. the following points have been reſolved;

1. That the office of chancellor, regiſter, and commiſſary in eccleſiaſtical courts, are within the meaning of the ſtatute, in as much as thoſe courts do not only determine matters which are brought before them, merely *pro ſalute animæ*, but alſo have the deciſion of diſputes concerning the lawfulneſs of matrimony and legitimation of children, which touch the inheritance of the ſubjects, and alſo hold plea of legacies and tithes, *&c.* in which reſpects they are courts of juſtice. 1 *Hawk. P. C.* 169.

2. That one who makes a contract for an office contrary to the purport of the ſaid ſtatute, is ſo far diſabled to hold the ſame, that he cannot at any time during his life be reſtored to a capacity of holding it by any grant or diſpenſation whatſoever. 1 *Haw. P. C.* 169.

How bribery is puniſhable.

It is ſaid, that at common law, bribery in a judge, in relation to a cauſe depending before him, was looked upon as an offence of ſo heinous a nature, that it was ſometimes puniſhed as high-treaſon before the 25 *Ed.* 3. And at this day it is certainly a very high offence, and puniſhable, not only with the forfeiture of the offender's office of juſtice, but alſo with fine and impriſonment. 1 *Hawk. P. C.* 169, 170.

Alſo all the other above-mentioned kinds of bribery, taken in a large ſenſe, ſeem to be puniſhable with fine and impriſonment, *&c.* and in the time of king *James* the firſt, the earl of *M.* lord high treaſurer of *England*, being impeached by the commons for refuſing to hear petitions referred to him by the king, till he had received great bribes, and for other ſuch like miſdemeanours, was, by ſentence of the lords, deprived of all his offices, and diſabled to have any for the future, or to ſit in the parliament; and was fined fifty thouſand pounds, and impriſoned during the king's pleaſure. 1 *Hawk. P. C.* 170.

Bridges.

PUBLICK bridges which are of general conveniency, are of common right to be repaired by the whole inhabitants of that county in which they lie. 1 *Bac. Abr.* 329. cites 1 *Rol. Abr.* 367. 2 *Inſt.* 701. 13 *Co.* 33. *Cro. Car.* 365.

But a corporation aggregate, either in reſpect of a ſpecial tenure of certain lands, or in reſpect of a ſpecial preſcription; alſo any other perſon, by reaſon of ſuch a ſpecial tenure, may be compelled to repair them. 1 *Bac. Abr.* 329.

Any particular inhabitant or inhabitants of a county, or tenant, or tenants of land, chargeable with the repairs of a common bridge, may be made defendants to an indictment for not repairing it, and be liable to pay the whole fine aſſeſſed by the court, for the default of ſuch repairs, and ſhall be put to their remedy at law, for a contribution from thoſe who are bound to bear a proportionable ſhare in the charge; for caſes of this nature require the utmoſt expedition; and bridges being of abſolute neceſſity, are not to lie unrepaired till ſuits are determined. 1 *Bac. Abr.* 329. cites 1 *Jon.* 173. *Poph.* 192. 6 *Mod.* 307. *Salk.* 358.

If a manor, held by the ſervice or tenure of repairing a common bridge, comes, by the alienation of the lord, into the hands of ſeveral perſons, every alienee being tenant of any parcel, either of the demeſne or ſervices, ſhall be liable to the whole charge, and put to their remedy for a contribution from the reſt; and though the lord on ſuch alienation, agreed that the purchaſers ſhould be exempt from the charges, yet however binding ſuch agreements might be among themſelves, it ſhall not work a general injury, by making the remedy the publick had, more difficult than it was before. 1 *Salk.* 358.

So

So if a manor ſubject to ſuch charge, comes into the hands of the crown, yet the duty upon it continues, and any perſon claiming afterwards under the crown, the whole manor, or any part thereof, ſhall be liable to an indictment or information, for want of due repairs. 1 *Salk.* 358.

If part of a bridge lie within a franchiſe, thoſe of the franchiſe may be charged with the repairs for ſo much; alſo by a ſpecial tenure, a man may be charged with the repairs of one part of a bridge, and the inhabitants of the county are to repair the reſt. *Hawk. P. C.* 221. *Raym.* 384, 385.

It hath been reſolved, that it is not ſufficient for the defendant to an indictment for not repairing a bridge, to excuſe themſelves by ſhewing that they are not bound either to repair the whole, or any part of the bridge, without ſhewing what other perſon is bound to repair the ſame; and it is ſaid, that in ſuch caſe the whole charge ſhall be laid upon ſuch defendants, by reaſon of their ill plea. 1 *Hawk. P. C.* 221. *Pop.* 192.

It is ſaid that where ſuch defendants plead, that *A. B.* ought to repair the bridge mentioned in the indictment, and take a traverſe to the charge againſt themſelves, the attorney general in this ſpecial caſe, may take a traverſe upon a traverſe, and inſiſt that the defendants are bound to the repairs, and traverſe the charge alledged againſt *A. B.* and that an iſſue ought to be taken of ſuch a traverſe, and that the attorney general may afterwards ſurmiſe that the defendants are bound to repair it, and that the whole matter ſhall be tried by an indifferent jury. 1 *Hawk. P. C.* 221. 1 *Sid.* 140.

It ſeems clear that thoſe who are bound to repair ſuch bridges, muſt make them of ſuch height and ſtrength as ſhall be anſwerable for the courſe of the water, whether it continue in the old channel, or make a new one; and that they are not puniſhable as treſpaſſers for entring on any adjoining land for ſuch purpoſe, or for laying on the materials requiſite for ſuch repairs. 1 *Hawk. P. C.* 221.

Magna Charta, 9 *Hen.* 3. *c.* 15. [*A. D.* 1225. *intituled*] "Making of bridges and banks."

"No town nor freeman ſhall be diſtrained to make bridges nor banks, but ſuch as of old time and of right have been accuſtomed to make them in the time of King *Henry* our grandfather."

Here it is to be obſerved, ſays lord *Coke* in his comment on this chapter, that in the reign of king *John*, and of his elder brother king *Richard*, which were troubleſome and irregular times, divers oppeſſions, exactions, and injuries, were incroached upon the ſubject in theſe king's names, for making of bulwarks, fortreſſes, *bridges* and banks, contrary to law and right. But the reign of king *Henry* 2. is commended for three things; firſt, that his privy council were wiſe, and expert in the laws of the realm. Secondly, that he was a great defender, and maintainer of the rights of his crown, and of the laws of his realm. Thirdly, that he had learned and upright judges, who executed juſtice according to his

laws; therefore for his great and never dying honour, this and many other acts made in the reign of *Henry* 3. do refer to his reign, that matters ſhould be put in practice, as they were of right accuſtomed in his time; ſo that this chapter is a declaration of the common law, and ſo in the reign of *H.* 4. and *H.* 5. the parliaments refer to the reign of king *Edward* 1. who was a prince of great fortitude, wiſdom and juſtice. 2 *Inſt.* 29.

Stat. 22 *H.* 8. *c.* 5. [*A. D.* 1530. *intituled*] " For bridges and highways."

A remedy to repair decayed bridges in highways, and by whom. 13 Co. 33. Poph. 192. 2 Inſt. 700. Juſtices of peace may award proceſs againſt them who ought to repair bridges. This act is enforced by 1 An. ſtat. 1. c. 18. ſo far as not altered by that ſtatute.

" Be it enacted by the king our ſovereign lord, and the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by authority of the ſame, That the juſtices of peace in every ſhire, of this realm, franchiſe, city or borough, or four of them at leaſt, whereof one to be of the *quorum*, ſhall have power and authority to inquire, hear and determine in the king's general ſeſſions of peace, of all manner of annoyances of bridges broken in the highways, to the damage of the king's liege people, and to make ſuch proceſs and pains upon every preſentment afore them for the reformation of the ſame, againſt ſuch as owen to be charged for the making or amending of ſuch bridges, as the king's juſtices of his bench uſe commonly to do, or as it ſhall ſeem by their diſcretions to be neceſſary and convenient for the ſpeedy amendment of ſuch bridges."

Sect. 2. " And where in many parts of this realm it cannot be known and proved, what hundred, riding, wapentake, city, borough, town or pariſh, nor what perſon certain, or body politick, ought of right to make ſuch bridges decayed, by reaſon whereof ſuch decayed bridges, for lack of knowledge of ſuch as owen to make them, for the moſt part lie long without any amendment, to the great annoyance of the king's ſubjects:"

Sect. 3. " For the remedy thereof, be it enacted by authority aforeſaid, That in every ſuch caſe the ſaid bridges, if they be without city, or town corporate, ſhall be made by the inhabitants of the ſhire or riding within the which the ſaid bridge decayed ſhall happen to be; (2) and if it be within any city or town corporate, then by the inhabitants of every ſuch city or town corporate wherein ſuch bridges ſhall happen to be; (3) and if part of any ſuch bridges ſo decayed happen to be in one ſhire, riding, city or town corporate, and the other part thereof in another ſhire, riding, city or town corporate, or if part be within the limits of any city or town corporate, and part without, or part within one riding, and part within another; that then in every ſuch caſe, the inhabitants of the ſhires, ridings, cities or towns corporate ſhall be charged, and chargeable to amend, make and repair ſuch part and portion of ſuch bridges ſo decayed, as ſhall lie and be within the limits of the ſhire, riding, city or town corporate, wherein they be inhabited at the time of the ſame decays."

Sect. 4. " And be it further enacted, That in every ſuch caſe where it cannot be known and proved, what perſons, lands, tenements and bodies politick owen to make and repair ſuch bridges, that for ſpeedy reformation

tion and amending of ſuch bridges, the juſtices of the peace within the ſhires or ridings wherein ſuch decayed bridges been out of cities and towns corporate, and if it be within cities or towns corporate, then the juſtices of peace within every ſuch city or town corporate, or four of the ſaid juſtices at the leaſt, whereof one to be of the *quorum*, ſhall have power and authority within the limits of their ſeveral commiſſions and authorities, to call before them the conſtables of every town and pariſh, being within the ſhire, riding, city or town corporate, as well within liberty as without, wherein ſuch bridges, or any parcel thereof ſhall happen to be, or elſe two of the moſt honeſt inhabitants within every ſuch town, or pariſh in the ſaid ſhire, riding, city or town corporate, by the diſcretion of the ſaid juſtices of peace, or four of them at the leaſt, whereof one to be of the *quorum*; (2) and at and upon the appearances of ſuch conſtables or inhabitants the ſaid juſtices of peace, or four of them, whereof one to be of the *quorum*, with the aſſent of the ſaid conſtables or inhabitants, ſhall have power and authority to tax and ſet every inhabitant in any ſuch city, town or pariſh within the limits of their commiſſions and authorities, to ſuch reaſonable aid and ſum of money, as they ſhall think by their diſcretions convenient and ſufficient for the repairing, re-edifying, and amendment of ſuch bridges; (3) and after ſuch taxation made, the ſaid juſtices ſhall cauſe the names and ſums of every particular perſon ſo by them taxed, to be written in a roll indented: (4) and ſhall alſo have power and authority to make two collectors of every hundred, for collection of all ſuch ſums of money by them ſet and taxed; which collectors, receiving the one part of the ſaid roll indented under the ſeals of the ſaid juſtices, ſhall have power and authority to collect and receive all the particular ſums of money therein contained, and to diſtrain every ſuch inhabitant, as ſhall be taxed and refuſe payment thereof, in his lands, goods and chattels, and to ſell ſuch diſtreſs, and of the ſale thereof retain and perceive all the money taxed, and the reſidue (if the diſtreſs be better) to deliver to the owner thereof; (5) and that the ſame juſtices, or four of them, within the limits of their commiſſions and authorities, ſhall alſo have power and authority to name and appoint two ſurveyors, which ſhall ſee every ſuch decayed bridge repaired and amended from time to time, as often as need ſhall require, to whoſe hands the ſaid collectors ſhall pay the ſaid ſums of money taxed, and by them received; (6) and that the collectors and ſurveyors, and every of them, and their executors and adminiſtrators, and the executors and adminiſtrators of them, and every of them, from time to time ſhall make a true declaration and account to the juſtices of peace of the ſhire, riding, city or town corporate, wherein they ſhall be appointed collectors or ſurveyors, or to four of the ſame juſtices, whereof one to be of the *quorum*, of the receipts, payments, and expences of the ſaid ſums of money: (7) and if they or any of them refuſe that to do, that then the ſame juſtices of peace, or four of them, from time to time by their diſcretions ſhall have power and authority to make proceſs againſt the ſaid collectors and ſurveyors, and every of them, their executors and adminiſtrators, and the executors and adminiſtrators of every of them, by attachments.

The juſtices may tax the inhabitants with the aſſent of the conſtables.

By 1 An. ſtat. 1. c. 18. ſeſſions of the peace may tax the ſeveral townſhips, &c.

Two collectors of every hundred.

The juſtices ſhall appoint two who ſhall repair the bridge.

The collectors and ſurveyors ſhall accompt to the juſtices.

tachments under their ſeals, returnable at the general ſeſſions of peace; (8) and if they appear, then to compel them to account as is afore ſaid; or elſe if they or any of them refuſe that to do, then to commit ſuch of them as ſhall refuſe, to ward, there to remain without bail or mainpriſe till the ſaid declaration and account be truly made."

Sect. 5. "And where any bridge or bridges lien in one ſhire or riding, and ſuch perſons inhabitants, bodies politic, lands or tenements, which owen to be charged to the making and amending of ſuch bridges, lien and abiden in another ſhire or riding, or where ſuch bridges been within any city or town corporate, and the perſons inhabitants, bodies politic, lands or tenements, that owen to make or repair any ſuch bridges, lien and been out of the ſaid cities and towns corporate; Be it enacted, That in every ſuch caſe the juſtices of peace of the ſhire, city or town corporate, within the which ſuch decayed bridges, or any part thereof ſhall happen to be, ſhall have power to enquire, hear and determine all ſuch annoyances, being within the limits of their commiſſions or authorities; (2) and if the annoyances be preſented, then to make proceſs into every ſhire within this realm againſt ſuch as owen to make or amend any ſuch bridges ſo preſented before them to be decayed, to the annoyance and let of the paſſage of the king's ſubjects, and to do further in every behalf in every ſuch caſe, as they might by authority of this act, in caſe that the perſons or bodies politic, lands or tenements, which owen to be charged to the amending or making of ſuch bridges or any part thereof, were in the ſame ſhire, riding, city or town corporate, where ſuch annoyance ſhall happen to be. (3) And that all ſheriffs and bailiffs of liberties and franchiſes ſhall truly ſerve and execute ſuch proceſs, as ſhall come to their hands from the ſaid juſtices of peace afore whom any preſentment ſhall be had for any ſuch annoyance, according to the tenour and effect of the ſaid proceſs to them directed, without favour, affection or corruption; upon pain to make ſuch fine as ſhall be ſet upon them or any of them by the diſcretion of the ſaid juſtices.

The juſtices may make proceſs into every ſhire againſt offenders.

Sheriffs, &c. ſhall ſerve proceſs upon the offenders.

Sect. 6. "Provided alway, that this act, or any thing therein contained, be not prejudicial to the liberties of the five ports, or members of the ſame. And for reformation of annoyance of bridges within the ſaid ports and members.

The five ports excepted.

Sect. 7. "Be it enacted by authority of this preſent parliament, That the warden, mayors and bailiffs elected, and jurates of the ſame ports, and every of them, have power and authority to enquire, hear and determine all manner of common annoyances of bridges within the ſame ports and members, and to make ſuch proceſs, pains, taxations, and all other things within the ſame ports and members, as the juſtices of peace may do in other ſhires or places out of the ſame ports, by virtue and authority of this preſent act in every behalf."

Sect. 8. "And be it further enacted by the authority aforeſaid, That the juſtices of peace, or four of them, ſhall have full power and authority to allow ſuch reaſonable coſts and charges to the ſaid ſurveyors and collectors, as by their diſcretions ſhall be thought convenient.

Allowance made to the ſurveyors and collectors.

Sect.

Sect. 9. "Forasmuch that albeit bridges decayed were amended and repaired according to the tenour of this act, yet nevertheless if speedy remedy for the amendment of the ways next adjoining to every of the ends of such bridges should not be had and made, the king's subjects should take little or none avail or commodity in many parts of this realm by the making of the bridges: (2) In consideration whereof, Be it enacted by the king our sovereign lord, and the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, That such part and portion of the high-ways in every part of this realm, as well within franchise, as without, as lie next adjoining to any ends of any bridges within this realm, distant from any of the said ends by the space of three hundred foot, be made, repaired and amended as often as need shall require; (3) and that the justices of the peace in every shire of this realm, franchise city or borough, or four of them at the least, whereof one to be of the *Quorum*, within the limits of their commissions and authorities, shall have power and authority to inquire, hear and determine in the king's general sessions of peace, all manner of annoyances of and in such high-ways, so being and lying next adjoining to any ends of bridges within this realm, distant from any one of the ends of such bridges three hundred foot, and to do in every thing and things concerning the making, repairing and amending of such highways, and every of them, in as large and ample manner, as they might and may do to and for the making, repairing, and amending of bridges, by virtue and authority of this present act."

An order for the amending of the ways at the ends of bridges.

Stat. 1 *Ann. stat.* 1. *c.* 18. [*A. D.* 1701.] *Made, among other purposes,* "to explain and alter the act made in the two and twentieth year of king *Henry* the eighth, concerning repairing and amending of bridges in the highways."

"Whereas by an act of parliament in the two and twentieth year of the reign of king *Henry* the eighth, intituled, "An act concerning repairing and amending of bridges in the highways," it is amongst other things therein enacted, That in every case where it cannot be known and proved, what persons, lands, tenements, and bodies politic ought to make and repair such bridges, that for speedy reformation and amending of such bridges, the justices of the peace within their several counties, shires, ridings and divisions, cities and towns corporate, or any four of them, whereof one to be of the *Quorum*, shall within the limits of their several commissions call before them the constables of every town and parish, or else two of the most honest inhabitants of every such town and parish, and, with the assent of the said constables or inhabitanrs, shall tax and set every inhabitant in such city, town and parish, to such reasonable aid, and sums of money, as they shall think by their discretions convenient for the repairing of such bridges, and after such taxation made, shall cause the names and sums of every particular person so by them taxed, to be written in a roll indented, one part whereof is to be delivered, under the hands and seals of the said justices, to two

22 H. 8. c. 5. concerning the amending of bridges.

collectors appointed by the ſaid juſtices for every hundred, who are thereby impowered to collect the ſame; which method and manner of taxing and collecting the ſaid money for repair of decayed bridges and the highways thereunto adjoining, having by long experince been found very troubleſome, burthenſome and chargeable to the ſeveral counties, cities, towns corporate, ridings, and diviſions: And whereas in many places within this kingdom, more money than is neceſſary for the repair of ſuch bridges, hath been taxed and collected, or the money which hath been ſo taxed and collected, hath been miſimployed, and not laid out in the repair of ſuch bridges, as was intended; For remedy of all which miſchiefs and inconveniencies for the future, may it pleaſe your moſt excellent majeſty that it may be enacted; and Be it enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and every the clauſes, matters and things in the ſaid act of the two and twentieth year of the reign of the ſaid king *Henry* the eighth, not hereby altered, ſhall be and continue in full force and virtue, to all intents, conſtructions and purpoſes whatſoever, relating to the repairing of decayed bridges, and the highways thereunto adjoining."

further continued.

For collecting money for repair of decayed bridges, juſtices of peace may aſſeſs every town, &c. in proportion.

Sect. 2. "And be it further enacted by the authority aforeſaid, That for the more eaſy taxing and collecting of the money for the repair of decayed bridges, and that the ſame may be duly applied to the purpoſes for which it is intended, the juſtices of the peace, within the ſeveral limits of their commiſſions, ſhall, at their general or quarter ſeſſions of the peace, from and after the firſt of *May*, which ſhall be in the year of our lord one thouſand ſeven hundred and two, have full power and authority, upon due preſentment to them made, that any bridge within their reſpective commiſſions or authorities is out of repair, and which by them hath uſually, or ought to have been repaired and maintained, to aſſeſs upon every town, pariſh or place within their reſpective commiſſions, in proportions upon each reſpective town and pariſh, as they uſually have been aſſeſſed towards the repair of bridges; which money ſo aſſeſſed, as aforeſaid, ſhall be levied and collected by the reſpective conſtables of each pariſh, townſhip, hamlet or vill, or by ſuch other perſon and perſons, and in ſuch manner, as the ſaid juſtices, by their order at ſuch ſeſſions, ſhall in that behalf direct and appoint; and the money thereby raiſed ſhall (by ſuch conſtables or other perſons ſo as aforeſaid by them collected) be paid over by them to the high conſtables of every hundred, in any ſuch county, city, riding or diviſion, in ſix days after they ſhall have received the ſame, and the high conſtables ſhall, and are hereby required, in ten days after their receipt, to pay the ſame into the hands of ſuch perſon and perſons, as the ſaid juſtices by their order at ſuch ſeſſions ſhall direct and appoint to be treaſurers and receivers of the ſame, and the money thereby raiſed ſhall be employed and accounted for, according to the orders and directions of the ſaid juſtices, for and towards the amending of ſuch decayed bridges, and the highways at the end of the ſaid bridges, from time to time, as need ſhall require; and the ſaid aſſeſſments ſhall be levied by diſtreſs and ſale of the goods of every perſon ſo aſſeſſed,

Aſſeſſments how to be levied, &c.

Treaſurers to be appointed and monies how imployed.

On non payment to be

aſſeſſed, not paying the ſame ten days after demand, rendering the overplus of the value of the goods ſo diſtrained to the owner and owners thereof, the neceſſary charges of making and ſelling ſuch diſtreſs being firſt deducted." Levied by diſtreſs.

Sect. 3. "And to the end that the money, which is hereby intended to be aſſeſſed and levied, may be duly collected, paid and applied to the ſeveral purpoſes for which it is intended, Be it further enacted by the authority aforeſaid, That every high conſtable, church-warden, overſeer of the poor or petty conſtable, or other perſon that ſhall neglect to aſſeſs, collect or pay the money hereby intended to be raiſed, as is herein before directed, ſhall for every ſuch offence forfeit the ſum of forty ſhillings; and every treaſurer, that ſhall pay any money but by the order of ſuch juſtices of the peace at ſuch ſeſſions, which order the ſaid juſtices are hereby required and commanded to make, only for the building, repairing or amending ſuch bridges, and the highways at the end of ſuch bridges, as aforeſaid, ſhall for every ſuch offence forfeit the ſum of five pounds." Penalty on conſtable, &c.

Sect 4. "And whereas upon preſentments and indictments for not repairing ſuch bridges, and the highways at the end of ſuch bridges, the fines impoſed and ſet upon ſuch preſentments and indictments, and other fines and iſſues, for not repairing, building and amending ſuch bridges, and the highways at the end of ſuch bridges, are returned into the *Court* of *Exchequer*, or other courts; Be it therefore further enacted by the authority aforeſaid, That no fine, iſſue, penalty or forfeiture ſhall hereafter be returned into the *Court* of *Exchequer*, or other court, but ſhall be levied and paid into the hands of the treaſurer or treaſurers ſo, as aforeſaid, appointed by the ſaid juſtices, to be accounted for by the ſaid treaſurer, and to be applied by the ſaid juſtices towards the building, repairing or amending ſuch bridges, and the highways at the end of ſuch bridges, and to no other end or purpoſe whatſoever." Fines &c. to be paid to the treaſurer.

Sect. 5. "And be it enacted by the authority aforeſaid, That all matters concerning the repairing and amending of the bridges and highways, herein before mentioned, ſhall be determined in the county where they lie, and not elſewhere; and that no preſentment, or indictment for not repairing ſuch bridges, or the highways at the end of ſuch bridges, ſhall be removed by *certiorari* out of the ſaid county into any other court." Matters concerning repair of bridges, &c. where to be determined.

Sect. 6. "And be it further enacted by the authority aforeſaid, That the ſaid juſtices of the peace at ſuch general quarter-ſeſſions, as aforeſaid, ſhall have full power and authority to allow ſuch perſons concerned in the execution of this preſent act any ſum not exceeding three pence in the pound." Juſtices to allow 3d. in the pound, &c.

Sect. 7. "And be it further enacted by the authority aforeſaid, That if any action or ſuit ſhall be hereafter commenced or proſecuted againſt any perſon or perſons by this act authorized to put the ſame in execution, every perſon or perſons ſo ſued may plead the general iſſue, and give this act, or the ſaid recited act, made in the two and twentieth year of the reign of *Henry* the eighth, and the ſpecial matter, in evidence; and if the plaintiff ſhall become nonſuit, or forbear further proſecution, or ſuffer diſcontinu- General iſſue.

ance, or if a verdict paſs againſt him or her, the ſaid defendant and defendants ſhall recover his and their double coſts, for which he and they ſhall have the like remedy, as in caſes where coſts by law are given to the defendants."

Perſons and things exempted.

Sect. 8. "Provided always, That this act nor any thing therein contained ſhall excuſe or diſcharge any particular perſons, eſtates or places from repairing any bridge, which they have heretofore uſually repaired."

Penalties how to be levied.

Sect. 9. "And be it further enacted by the authority aforeſaid, That all the penalties and forfeitures incurred by this act ſhall be applied towards the repairing the ſaid bridges and highways at the ends of the ſame."

Stat. 12 *Geo.* 2. *c.* 29. [*A. D.* 1739. *Intituled*] "An act for the more eaſy aſſeſſing, collecting, and levying of county rates."

Preamble, reciting the acts, 22 *Hen.* VII. *c.* 5. 1 *Annæ, ſtat.* 1. *c.* 18.

"Whereas by an act paſſed in the twenty-ſecond year of the reign of king *Henry* the eighth, for repairing and amending bridges and highways: and whereas by another act paſſed in the firſt year of the reign of her late majeſty queen *Anne*, to explain and alter the ſaid act, it is, for the more eaſy taxing and collecting the money for the repair of ſuch bridges and highways thereunto adjoining (amongſt other things) enacted, That the juſtices of the peace within the ſeveral limits of their commiſſions ſhall, at their general or quarter-ſeſſions of the peace, have full power and authority, upon due preſentment to them made that any bridge within their reſpective commiſſions or authorities is out of repair, and which by them hath uſually, or ought to have been repaired and maintained, to make aſſeſſments upon every town, pariſh or place, within their reſpective commiſſions for that purpoſe, in proportions upon each reſpective town and pariſh, as they uſually have been aſſeſſed towards the repair of bridges; which aſſeſſments are to be levied and collected in the manner preſcribed by the ſaid act."

No repairs of bridges, &c. but upon preſentments of the grand jury.

Sect. 13. "And be it further enacted by the authority aforeſaid, That no part of the money to be raiſed and collected in purſuance of this act ſhall be applied to the repair of any bridges, gaols, priſons, or houſes of correction, until preſentments be made by the reſpective grand juries, at the aſſize, great ſeſſions, general gaol-delivery, or general or quarter-ſeſſions of the peace held for any county, riding, diviſion, city, town corporate or liberty, of the inſufficiency, inconveniency, or want of reparation of their bridges, gaols, priſons or houſes of correction.

Juſtices to contract with perſons for public repairs,

Sect. 14. "And be it further enacted by the authority aforeſaid, That from and after the firſt day of *June* one thouſand ſeven hundred and thirty-nine, when any public bridges, ramparts, banks or cops, or other works, are to be repaired at the expence of any county, city, riding, hundred, diviſion, liberty or town corporate; it ſhall and may be lawful to and for the juſtices of the peace at their general or quarter-ſeſſions reſpectively, or the greater part of them then and there aſſembled, if they think proper and convenient, after preſentment to be made as aforeſaid of the want of reparation of ſuch bridges, ramparts, banks or cops, to contract and agree with any perſon or perſons for rebuilding, repairing, and amending of ſuch bridges, ramparts, banks or cops, as ſhall be within their

their reſpective counties, cities, ridings, hundreds, diviſions, liberties or towns corporate, and all other works which are to be repaired and done by aſſeſſment on the reſpective counties, cities, ridings, hundreds, diviſions, Liberties or towns corporate, for any term or terms of years, not exceeding ſeven years, at a certain annual ſum, payment, or allowance for the ſame; ſuch contractor or contractors giving ſufficient ſecurity for the due performance thereof, to the reſpective clerk of the peace for the time being, or the town clerk, high bailiff, or chief officer of any city, town corporate or liberty; and that ſuch juſtices at their reſpective general or quarter-ſeſſions ſhall give public notice of their intention of contracting with any perſon or perſons for rebuilding, repairing and amending the bridges, ramparts, banks or cops, and other works aforeſaid; and that ſuch contracts ſhall be made at the moſt reaſonable price or prices which ſhall be propoſed by ſuch contractors reſpectively; and that all contracts when agreed to, and all orders relating thereto, ſhall be entered in a book, to be kept by the reſpective clerk of the peace for the time being, or the town clerk, high bailiff or chief officer of any city, town corporate or liberty, for that purpoſe; who is and are hereby required to keep them amongſt the records of ſuch county, city, town corporate or liberty, to be from time to time inſpected at all ſeaſonable times by any of the ſaid juſtices within the limits of their commiſſions; and by any perſon or perſons employed or to be employed by any pariſh, townſhip or place, contributing to the purpoſes of this act, without fee or reward.

upon publick notice;

Stat. 14 *Geo.* 2. *c.* 33. [*A. D.* 1741.] *Made, among other purpoſes,* "to ſupply ſome defects in the laws for repairing and rebuilding county bridges."

Whereas it does and may happen, that when county bridges are to be rebuilt or repaired, a piece or parcel of ground thereto adjoining may be of great uſe or ſervice, either for enlarging ſuch bridges, or more commodiouſly rebuilding them: And whereas there is no power given by the laws in being for the rebuilding or repairing of county bridges to the juſtices of the peace, to purchaſe any ſuch pieces or parcels of ground: And whereas by an act made in the thirteenth year of the reign of his preſent majeſty, intituled, "An act for amending and enforcing the laws relating to rogues, vagabonds, and other idle and diſorderly perſons, and for reducing the ſame into one act of parliament; and alſo for amending the laws for erecting, providing, and regulating houſes of correction;" it is (amongſt other things) enacted, That upon the preſentment of the grand jury at the aſſizes, great ſeſſion, or general gaol-delivery, held for any county or liberty, that there is no houſe of correction, and that it will be neceſſary to provide one or more houſe or houſes of correction in ſuch county or liberty, or that the houſe or houſes of correction in any ſuch county or liberty is or are not ſufficient, and want to be enlarged; the juſtices of the peace at their general or quarter-ſeſſions ſhall have power to build, erect, or enlarge one or more fit or convenient houſe or houſes of correction, or to purchaſe one or more convenient houſe or houſes

Preamble reciting the act, 13 *Geo.* 2. *c.* 24.

for that purpoſe, or to purchaſe land to erect ſuch houſe or houſes of correction upon, and to make a convenient backſide or backſides, outlet or outlets thereto: And whereas in ſome counties and liberties, where it is neceſſary to have a houſe or houſes of correction, there is or may be no aſſiſe, great ſeſſion, or general gaol-delivery, and in conſequence there can be no preſentment of ſuch grand jury, ſo that in ſuch caſes the ſaid act is rendered ineffectual: Therefore for the better repairing and rebuilding county bridges, and for ſupplying the defects of the ſaid recited act, ſo far as the ſame relates to the repairing, enlarging, building and providing houſes of correction, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the twenty-fourth day of *June* one thouſand ſeven hundred and forty-one, the juſtices of the peace of any county, city, riding, liberty or diviſion, at their general ſeſſions, or general quarter-ſeſſions aſſembled, or the major part of them, ſhall have power, and are hereby authorized, to purchaſe of, or agree or contract with, any perſon or perſons, bodies politick or corporate for any piece or parcel of land adjoining or near to any county bridge within the limits of their reſpective commiſſions, for the more commodious enlarging or convenient rebuilding the ſame; which pieces or parcels of land ſhall not exceed one acre in the whole for any ſuch bridge, and ſhall from time to time be paid for by the reſpective county treaſurers, out of any monies raiſed or to be raiſed by virtue of an act made in the twelfth year of the reign of his preſent majeſty, intituled, *An act for the more eaſy aſſeſſing, collecting, and levying of county rates*; ſuch treaſurers being thereunto authorized, by orders under the hands and ſeals of the reſpective juſtices of the peace at their general ſeſſions, or general quarter-ſeſſions, or the major part of them; which lands ſo purchaſed ſhall be conveyed to ſuch perſon or perſons, as the ſaid juſtices of the peace at their general ſeſſions, or general quarter-ſeſſions, or the major part of them ſhall reſpectively appoint, in truſt, and for the uſes and purpoſes of enlarging or rebuilding ſuch bridges reſpectively.

Juſtices at their quarter-ſeſſions may purchaſe lands to build county bridges.

Certiorari may be granted where private perſons are charged to repair a bridge. Stran. 900. Eaſt. 4 Geo. 2. Rex. v. inhab. of Hamworth in co. Stafford.

Upon motion to quaſh a *certiorari* to remove an indictment againſt the defendants at ſeſſions, for not repairing a bridge; it was inſiſted, that by 1 *Ann. c.* 18. the *certiorari* is taken away. To which it was anſwered, and reſolved by the court, that this act extended only to bridges where the county is charged to repair; and that where a private perſon or pariſh is charged, and the right will come in queſtion, the act 5 & 6 *W. & M. c.* 11. had allowed the granting a *certiorari*. And therefore they refuſed to quaſh it.

Tenant at will is obliged to repair a houſe adjoining to a common bridge. Ld.

The defendant *Watſon* was indicted, for that he was ſuch a day poſſeſſed of a houſe in *Lynn Regis* adjoining to the common bridge; that he ought to repair the ſaid houſe *ratione tenurae*; but that he permitted it to be ſo much out of repair, that it was ready to fall upon the queen's ſubjects paſſing over the ſaid bridge, &c. Upon Not guilty pleaded, the jury found a ſpecial

cial verdict, that *Watſon* was but tenant at will of the ſaid houſe, and conclude with a ſpecial concluſion, praying the judgment of the court, whether he was obliged *ratione tenurae*, to repair the houſe. And after argument by Mr. *Montague* for the defendant, and by Mr. *Weld* for the queen, it was adjudged, that the defendant, as tenant at will only, ought to repair the houſe, ſo that the public be not prejudiced by the want of repairs, but that he is not compellable to repair as to his landlord. And that is ſhewn well enough in this indictment. The only objection is, that he is not chargeable to repair *ratione tenurae*; but though that is improper, yet it ſhall be intended of the poſſeſſion, and not of a ſervice. And judgment was given againſt the defendant.

Raym. Eaſt. 2 Ann. Regina v. Watſon.

An information was exhibited againſt the defendant, for that, that he and all the lords of the manor of *D.* have time whereof, *&c.* been obliged to repair a bridge, *&c.* which was out of repair, *&c.* Upon Not guilty pleaded, and trial before *Holt* chief juſtice at *Niſi prius Hertford ſummer aſſiſes* 1 *Ann. reg.* it was held by him, that a preſcription, that the lords of the manor ought to repair the bridge, without ſaying *ratione tenurae*, or *ratione terrae*, was good; becauſe (by him) the manor may have been granted to be held by the ſervice of repairing of this bridge before the ſtatute of *Quia emptores terrarum*; or the king may make ſuch a grant at this day, he not being bound by the ſaid ſtatute. And in pleading one may ſay, that he is obliged as lord of the manor. But indeed it is by reaſon of the demeſnes of the manor; and therefore if part of the demeſnes be granted to *J. S.* he will be obliged to contribute to the repairs; but the information or indictment may be againſt any of them; and though it appear upon the evidence, that another is obliged alſo, yet the defendant muſt be convicted. And ſo the defendant was convict in this caſe; though he proved upon the evidence, that others were obliged to repair as well as himſelf. Afterward in Michaelmas term Mr. *Broderick* moved in arreſt of judgment, that it does not ſufficiently appear by this information, that the defendant is obliged to repair this bridge; for regularly the county ought to repair the public bridges; and no man ſhall be charged with the reparation of them, except *ratione tenurae*, or by preſcription; and therefore it ought to have been ſhewn here, by which of theſe two means the defendant became chargeable with theſe repairs. And he cited *Noy* 93. *Latch* 206. *Stile* 108. *Sir H. Spiller*'s caſe. *And.* 400. And at the aſſiſes, as alſo upon the firſt motion here, *Holt* chief juſtice ſaid, that this amounted to a *ratione tenurae*. But judgment was ſtayed, *quouſque*, *&c.* But afterwards at another day, Mr. *Williams* moving for judgment for the queen, *Holt* chief juſtice *mutata opinione*, ſaid, that altho' the defendant was lord of the manor, yet that was no reaſon that he ſhould repair the bridge; but ſome particular charge ought to be ſhewn, as *ratione tenurae*, or by preſcription. And in ſuch caſe, where a man is obliged to repair a bridge, his tenant for years being in poſſeſſion will be obliged to do it; and if he fail, he will be indictable for it. But he ſaid, that where a man is obliged to make fences againſt another, it is enough to ſay, that *omnes occupatores* ought to repair, *&c.* becauſe that lays a charge upon the right of

Information will not lie againſt a lord of a manor who is bound to repair a bridge, without ſaying *ratione tenurae*, or ſhewing a preſcription. Ld. Raym. 792, 804. Trin. 1 Ann. Regina v Sir John Bucknall.

of another, which it may be, he cannot particularly know. See *Cro. Jac.* 665. *Holbatch* v. *Warner*. All the other judges were of the ſame opinion, and judgment was arreſted.

A *mandamus* to make a rate for repair of a bridge muſt be directed to the juſtices of peace of the county, and not to the juſtices of a particular liberty Id. Raym. 1249. Eaſt. 5 Ann. Queen v. Juſtices of the peace of the liberty of St. Peter in York.

A *mandamus* was directed to them, reciting, that whereas an ancient bridge called *Tadcaſter* bridge, ſituate partly in the county of the city of *York*, and partly in the weſt-riding of the county of *York*, was lately fallen down, and that it ought to be repaired by the inhabitants of the county of the city, and of the weſt-riding of the county reſpectively; and that it was ſo done by them, except only the inhabitants of the liberty of St. *Peter's* in the city, and county of the city; and that the inhabitants of the city laid out in the repair of their part 1449 *l.* and that the ſhare of the inhabitants of the liberty of St. *Peter's* came to 30 *l.* which they had refuſed to pay, and the juſtices refuſed to make a rate for it according to the form of the ſtatute; and therefore commanded them to make and impoſe a rate upon the inhabitants within the liberty in the city and county of the city, for ſuch their part of the charges about the building and repairing of the bridge according to the form of the ſtatute, and cauſe it to be collected and levied and paid to the mayor and citizens, or their attorney or treaſurer, to their uſe, *&c.* To this the juſtices returned, that the city of *York* is an ancient city, and the citizens and inhabitants time out of mind have been a body politick; and that the city of *York* and ſuburbs and precincts of the ſame, 11 *February* 27 *Hen.* 6. and long before, were a county by itſelf, and called the county of the city of *York*; and that the hundred of *Aniſtie* was part of the weſt-riding of the county of *York*, and that *Hen.* 6. 11 *February* 27th of his reign, by his letters patent granted, that the hundred of *Aniſtie* ſhould be annexed to the county of the city of *York*, and that the city and ſuburbs of *York*, and the precinct of the hundred of *Aniſtie*, ſhould be the county of the city of *York*, divided from the county of *York*, ſaving to the church of *York*, and the archbiſhop, dean and chapter of the ſame, and to all communities eccleſiaſtical and temporal, and all other perſons, all manner of franchiſes, privileges, rights commodities, and cuſtoms, to them or any of them of right belonging, *ita quod* by that grant no prejudice in any manner ſhould be done to them, *in poſſeſſione, ſeu proprietate* of any liberties, franchiſes, privileges, rights, commodities, or cuſtoms of which they were then ſeiſed or poſſeſſed, or which did then belong to them: that the liberty of St. *Peter's* in *York* in the city and county of the ſaid city is, and at the making of the ſaid letters patent and long before was an ancient liberty, of which the dean and chapter of *York* is ſeiſed in fee, and that by all that time they had juſtices of peace there, and that the juſtices of peace of the county of *York*, or of the county of the city of *York*, had nothing to do there: that the part of the bridge in queſtion at the making of the letters patent lay in the hundred of *Aniſtie*, out of the liberty of St. *Peter's*, and out of the juriſdiction of the juſtices of peace of that liberty, and before that time was, and ought to be repaired by the inhabitants of the weſt-riding of the county of *York*, and from that time, and at the time of making the act of 22 *Hen.* 8. and ever ſince was uſed, and ought to be repaired by the inhabitants

of the city, and of the hundred of *Aniſtie* without any contribution from the inhabitants of the liberty, and that it was known and could be eaſily proved at the time of making the ſaid act, and is known and can be eaſily proved to be ſo, *&c.*

In this caſe it was reſolved, firſt, that the return was ill in ſubſtance, becauſe this charge came upon the city by uniting the hundred of *Aniſtie* to it, and conſequently the liberty of *St. Peters*, which is part of the city, muſt be ſubject to the charge as well as reſt of the city. That the act of *Hen.* 8. had taken away all exemptions, and franchiſes, and made them all liable to be charged: that there can no reaſon be given for exempting the liberty of St. *Peter's*, which would not as well hold for exempting all the reſt of the city, and lay the whole burden on the hundred of *Aniſtie*.

Powell agreed. And he ſaid, that as to the perſons, who of right ought to repair bridges, the act of 22 *Hen.* 8. was only declaratory of the common law; which *Holt* chief juſtice agreed and ſaid, that the charge of repairing bridges was incumbent on the county by common law, unleſs where particular perſons were charged with it by tenure or preſcription. What was new in it, was the appointing the method of doing it, that a hundred might be charged with the repair of a bridge by preſcription, but that was not the caſe here; for the hundred had not uſed to repair the bridge, but the weſt-riding of the county: that upon the annexing of this hundred, to the county of the city, there might have been an agreement made between the corporation and the dean and chapter, that they ſhould have been exempted from the charges of repairing this bridge; but if there were any ſuch, that ought to have been returned: that there had been no inſtance of the liberties contributing, becauſe this bridge had never been repaired before.

Serjeant *Wynne* againſt the return ſaid, that the latter part of it, that it was known that the county of the city ought to repair it, was ill; becauſe it did not ſay, how they were obliged to repair it, by tenure or preſcription; for that was what was meant by the *ought* in the act of parliament.

But then the writ was quaſhed, becauſe by the act the juſtices of the liberty had no power to aſſeſs or rate the inhabitants of the liberty, or to intermeddle in this matter; but the juſtices of the county of the city. And the chief juſtice ſaid, that the juſtices of the county of the city had power in this caſe, to ſummon the conſtables of the pariſhes within the liberty, out of the liberty; and ſo the juſtice of a county had conſtables within a corporation, where corporations are part of a county; for it is they muſt put this act in execution, and not the juſtices of the corporation.

There was another objection taken to the writ, that it would not lie in this caſe, becauſe the money was laid out firſt; whereas by the act of parliament, the rate ought to have been made firſt, like the caſe of overſeers of the poor on the 43 *Eliz.* and *Tawney*'s caſe cited, where a writ of *Mandamus* to make a writ to reimburſe an overſeer of the poor was quaſhed, becauſe the rate ought to have been made firſt.

The court ſeemed to be of opinion, that the money might be laid out, before a rate made, and that the juſtices of peace might make a rate to reimburſe

reimburſe the money. But then the chief juſtice ſaid, that the perſons that were to be charged to the repair of the bridge, ought to be made privy to the laying out of the money; and the rate to be made, ought to be for the repairing the bridge, and not for reimburſing money laid out in the repair of a bridge, and that in the caſe of an overſeer of the poor the juſtices might order a rate to be made for the relief of the poor, and out of that the overſeer might be reimburſed the money he had laid out, and that that was the regular way, but the rate muſt not be for reimburſing the overſeer.

I did not, ſays lord *Raymond*, take this to be ſo certainly reſolved, but the other being a plain exception, the court as I apprehended, went upon that.

The king by letters patents may enlarge the boundaries of a city. The Court of King's Bench has a concurrent juriſdiction with the ſeſſions about repairing bridges. 1 Stran. 177. Eaſt. 5 Geo. 1 Rex v. inhabitantes civitatis *Norwici*.

Information for not repairing three public bridges called *Herford* bridges, lying within the county of the city of *Norwich*, leading from the market croſs to *Ipſwich*, and ſets out that they are out of repair, and that it cannot be found that any perſon or body politic is bound by tenure or otherwiſe to repair them, and therefore the inhabitants of the county of the city are bound by the ſtatute notwithſtanding which they have not repaired them, but ſuffer them to continue in decay.

Jacob Robins and *Samuel Fremoult*, two of the inhabitants *of the city and county of the city*, come in the name of all the inhabitants *of the city*, and plead Not guilty. Then the record takes notice by way of ſuggeſtion, that the queſtion is between the citizens of *Norwich* and the inhabitants of the county of *Norfolk*, and they being intereſted, there can be no indifferent trial had there, And *Suffolk* being the next county, the *venire* is awarded thither: And at the trial the jury find this ſpecial verdict.

That the city of *Norwich* is an ancient city, and has been time out of mind a county of itſelf, diſtinct from the county of *Norfolk*. That the three bridges were at the time of making the ſtatute 22 *H.* 8. *c.* 5. within the county of *Norfolk*, and not within the county of the city of *Norwich*. That *Philip* and *Mary* 1 *April*, ſecond of their reign, reciting the many inconveniencies which had happened by not knowing the true bounds and limits of the county of the city, ſevered ſuch an extent of ground from the county of *Norfolk*, and annexed it to the city. That the three bridges are within the annexed boundaries, which are made to extend *uſque ad Herford* bridge, which is the fartheſt of the three. That they are public bridges, and no particular perſon bound to repair them. That they are out of repair. But whether the inhabitants of the county of the city are bound to repair them, is the doubt of the jury, upon which they pray the advice of the court. *Et ſi &c.*

Reynolds, ſerjeant *pro Rege*, made three points. 1. Whether the king can make a county of a city, or enlarge the boundaries of a preſcriptive city, and make the enlargements parcel of it. 2. Admitting he may, whether the enlarged part ſhall be conſidered as parcel of the old city, ſo as to charge them with repairing within 22 *H.* 8. 3. Whether in this caſe the fartheſt bridge be within the bounds of the enlargements.

1. As

1. As to the firſt queſtion, there is no doubt but that the king may enlarge the boundaries of any city. Moſt of the cities of *England* are inſtances of the execution of ſuch a power, and has been generally done by charter, which was eſteemed ſufficient without an act of parliament. This city of *Norwich* was ſo made at one time or other, for in *Bradley's Treatiſe of cities and boroughs* it is mentioned as a borough, and part of the county of *Norfolk*. *Henry* the ſeventh made *Cheſter* a county of itſelf, as appears by 4 *Inſt.* 215. 4 *Co.* 33. *a.*

2. Taking it then, that the king can enlarge any city, the next queſtion is, where the charge of repairing bridges within ſuch enlargement lies. The ſtatute lays no abſolute charge, till the bridges are in decay, ſo that when the ſtatute was made, though theſe bridges were within the county of *Norfolk*, yet as they were not in decay, the ſtatute had no operation upon them, before they were annexed to the city of *Norwich*. If an hundred were to be made at this day, the ſtatute of hue and cry would take place within it. So the prerogative of the king, in collating to a benefice void by the promotion of the incumbent to a biſhoprick, extends to a new erected pariſh, as was reſolved in Dr. *Birch*'s caſe in *Shower*, where there are many inſtances of this nature.

3. The third point is, whether one of the bridges be within the annexed bounds; the words are *uſque ad pontem de Harford ad exteriorem partem rivi*, and that will take it in. There is a great difference, where *uſque ad* is uſed to terminate a way, and where it is only uſed as a mark or deſignation of any conſpicuous place. *Calvin* in his *Lexicon juridicum*, ſays *uſque ad* is ſometimes *incluſionis nota.*

It is objected, that the defendants having pleaded the general iſſue, could give nothing in evidence, but that the bridges are in repair, and therefore that the trial ſhould have been in *Norfolk*. To this I anſwer, that generally it is ſo, as 2 *Lev.* 112. 1 *Sid.* 140. 1 *Keb.* 498. 1 *Mod.* 112. 3 *Keb* 301. becauſe *prima facie* the inhabitants are chargeable, and if they would diſcharge themſelves, they muſt do it by ſpecial pleading, and not upon the general iſſue, for the charge upon the inhabitants is a common law charge. 2 *Inſt.* 701. 1 *Ven.* 256. But theſe defendants were not chargeable *de communi jure*, but the county of *Norfolk* was; ſo that they are not obliged to find out who ought to repair, as when *prima facie* the charge lies upon them. They might conteſt the right with the county of *Norfolk* upon the general iſſue (as indeed they did), and therefore it was proper to carry it into *Suffolk*, the next county. *Vaugh.* 303. 2 *Roll. Abr.* 576. *Cro. Eliz.* 664. *Godb.* 420.

Raby contra. This information is grounded upon the ſtatute; now the ſtatute gives the juriſdiction to the ſeſſions, and where a ſtatute preſcribes a particular method, that muſt be followed. *Cro. Jac.* 643. 2 *Roll. Rep.* 398 4 *Mod.* 144. 2 *Inſt.* 702, 704.

2. The city and county of the city muſt be taken to be diſtinct, and if ſo, then the citizens only have appeared, for the appearance is *in nomine omnium inhabitantium civit' Norwic'*, and then the iſſue is not well joined.

3. It is a miſ-trial, it ſhould have been in *Norfolk*. That is the next county, and intirely diſintereſted; for the only queſtion on this iſſue is,

whether the bridges be in repair, for that only can be given in evidence on Not guilty. 1 *Ven.* 256. 1 *Mod.* 112. And on the record it appears not to be a trial in the next county, for the *venire* is awarded to *Suffolk* as the next county, *Norfolk* excepted, and there the trial ſhould have been. 1 *Inſt.* 125 155. 1 *Roll. Rep.* 28. *Dy.* 279. 2 *Roll. Abr.* 596, 597.

I agree, the king may annex land to a city or county in point of juriſdiction, but not in point of charge; for as to that it ſtill continues parcel of the old county. *Uſque ad* is excluſive of one of the bridges. As if I preſcribe for common *uſque ad Michaelmas-day*, I have no right of common upon *Michaelmas-day*.

Reynolds replied. The charge to repair is at common law, and upon that this information is founded. The ſtatute gives a concurrent, but not an excluſive juriſdiction, for here are no negative words, nor is this a new offence made by the ſtatute, and upon thoſe grounds it is that the caſes went. As to the fault in the appearance, which was deſigned as a trick, the inhabitants of the city and of the county of the city are all one, for they are commenſurate. It is abſurd to ſay the juriſdiction of the county ſhall be abridged in point of intereſt, and not in point of charge. The city has the land annexed to them, *et tranſit cum onere.* C. J. They who are not chargeable of common right, may diſcharge themſelves upon Not guilty. And if ſo, the trial was well in *Suffolk*. If they could only give reparation in evidence, then it ought to have been in *Norfolk*. There is no doubt but the information lies in this caſe, and as to the appearance, we may take them to be the ſame perſons. It ſeems to me that the fartheſt bridge is included, for it extends *ad exteriorem partem rivi*. There is nothing in that notion about diſtinguiſhing between juriſdiction and charge, for certainly both muſt go together.

Eyre J. inclined, that the trial was right in *Suffolk*, upon the diſtinction taken by *Reynolds*. *Sed adjournatur* to be further argued. And at another day,

Reeve pro Rege. Firſt exception. That no information lies in *B. R.* becauſe the 22 *H.* 8. gives the jurisdiction to four juſtices. *Cro. Jac.* 643. 2 *Roll. Rep.* 398. 4 *Mod.* 144. Anſwer; I agree thoſe caſes, for there the ſtatute makes a new offence, and chalks out a particular method; but this was an offence at common law, and the ſtatute does not give an excluſive, but only a concurrent juriſdiction. Here are no negative words, though if there were, it has been held that negative words ſhall not take away the juriſdiction of this court. 1 *Sid.* 359. 2 *Keb.* 340. 11 *Co.* 64.

Second exception. They ſay this cannot be taken to be an information at common law, becauſe it lays that the defendants *debent reparare virtute, &c.* and concludes *contra formam ſtatuti*. Anſwer; Such a concluſion will not make it an information upon the ſtatute; for nothing is here alledged, but what the common law ſaid before; and ſo it has been reſolved *Cro. Eliz.* 148. *Cro. Car.* 340. 2 *Roll. Abr.* 82. *pl.* 6. If a ſtatute ſhould add circumſtances to a common law offence, yet the indictment need not conclude *contra formam ſtatuti*. 1 *Ven.* 13. 1 *Sid.* 409. 2 *Keb.* 479.

Third

Third exception. The information is againſt the inhabitants of the county of the city, and the appearance for thoſe of the city only. Anſwer. Throughout the whole record the inhabitants of the city and county of the city are taken notice of to be the ſame. The bounds of the city and county of the city are generally the ſame. 1 *Roll. Abr.* 803. *pl.* 6.

Theſe are all the exceptions taken to the information and proceedings. I come now to the ſpecial verdict, upon which two points have been raiſed.

1. Whether theſe bridges are within the annexed boundaries, for the defendants ſay, that *uſque* being *terminus ad quem*, and *a*, *terminus a quo*, all the bridges are excluded. There can be no diſpute but that two of the bridges are included. The queſtion turns upon the third, *uſque ad pontem de Harford ad exteriorem partem rivi.* This *uſque ad* is only uſed to ſhew the circumference, for the other words take in the river. Now if it be taken excluſively, then the whole breadth of the bridge all round muſt be excluded. Words have been taken ineluſively according to the ſubject matter. 5 *Co.* 7, 103, 111. 6 *Co.* 62, 67. 1 *Ven.* 292. 3 *Keb.* 594. 3 *Leon.* 211. The bridges are only mentioned as notorious places.

2. They ſay here is a miſtrial, for on Not guilty the defendants could give nothing in evidence, but that the bridges are in repair, and therefore the trial ſhould have been in *Norfolk.* Anſwer; Defendants by not denying our ſuggeſtion have admitted the queſtion to be, whether the city or county ought to repair. The caſes cited of the other ſide are only, that the perſon chargeable *de communi jure* ſhall not give evidence, that another is bound *ratione tenurae*, but that is not our caſe. If a pariſh be indicted for not repairing a highway, you muſt prove it to be a highway, that it lies within the pariſh, and that it is out of repair; and if there be a failure in either of theſe, the defendants muſt be acquitted. 9 *H.* 6. 62. *Bro. General iſſue* 52, 53, 94. 34 *H.* 6. 43. *Show.* 270.

Branthwayte ſerjeant *contra.* I ſhall ſpeak only to the point of the miſtrial, and upon the information.

As to the firſt. No admiſſion of the parties can alter the law. It muſt appear to the court, that the queſtion is of ſuch a nature, as to draw the trial out of the proper county. 2 *Cro.* 597. *Hardr.* 311. Here the only queſtion is, whether the city of *Norwich* is bound to repair; for they cannot throw it any where elſe, without ſpecial pleading. 3 *Keb.* 301. 1 *Mod.* 112. 3 *Keb.* 370. 2 *Roll. Abr.* 597. *pl.* 1.

Secondly, I agree the information would have laid as at common law, if that method had been purſued; but here they make it a ſtatute offence, and therefore they ought to have purſued the ſtatute remedy.

The whole court were unanimous for the king upon all the points, but the miſtrial. As to which the C. J. *Powys* and *Eyre* were of opinion it was well in *Suffolk:* For the queſtion naturally ariſes, whether the bridges are in *Norfolk* or *Norwich*, and the reſult of that is, that either the one or the other is bound to repair: And not guilty puts all in iſſue. There was no other way to make this appear upon record, but by ſuggeſtion; which not being denied, it is as well as if it had appeared by ſpecial pleading.

And it ſhall not be in the power of the defendants, to diſappoint the king of a proper trial by their refuſing to plead ſpecially. *Forteſcue* J. *contra*, thought the right ought to be tried in this iſſue. *Et ſic adjournatur.*

The cauſe came now to be ſpoke to upon the ſingle point of the miſtrial.

Cheſhyre ſerjeant *pro rege.* The defendant in this caſe might put us to prove, in what county theſe bridges lie; and then the right of repair is a conſequence, wherefore the trial is right in *Suffolk.* They could not ſafely plead the ſpecial matter, becauſe it will amount to the general iſſue, and ſo be demurrable. 34 *H.* 6. 28, 43. *Bro. Iſſue* 53. 18 *H.* 6. 21. *Fitzh. Action ſur ſtat.* 4. 19 *H.* 8. 9. 2 *Roll. Abr.* 683. The defendants might have provided theſe to be private bridges on Not guilty. 1 *Ven.* 256. The reſolution of the caſe of the *King* v. *Inhab. Hornſey* was contrary to the opinion of *Holt* C. J. in *Show.* 270. for *Eyre*, *Dolbin* and *Gregory* denied the diſtinction, though the reporter takes no notice of it. *Mich.* 8 *W.* 3. *Rex* v. *Inhab. Ireton.* The reaſon of this ſuggeſtion was to prevent delay, and is therefore to be favoured, ſince it hinders the defendant from challenging. If he confeſſes (as he has done here) the truth of the ſuggeſtion; then he is eſtopped. If he denies it, that denial is entered of record, and after that he ſhall never come and alledge that matter as a fault. There is no other way to come at the truth of this fact, but by putting him to confeſs or deny it, for it is not a matter iſſuable. *Tri. per pais* 140. *Plow.* 74. *b.* 10 *H.* 6. 54. 14 *H.* 6. 2. *Nient dedire* amounts to a confeſſion, though it does not go on, *fore verum concedit*, as ſome of the entries are. This confeſſion is as much an eſtoppel, as in *Salk.* 310. where an executor ſuffered judgment by default, and then was eſtopped to ſay he had no aſſets.

Pengelly ſerjeant *contra.* The matter of this ſuggeſtion does not warrant the award of the *venire* into *Suffolk.* It is not averred the county of *Norfolk* is concerned, but only by way of concluſion, *ideoque*, which is not ſupported by the premiſſes. I agree the ſituation might have been conteſted at the trial. The court might have refuſed this ſuggeſtion, as was done in *Delme*'s caſe. So 2 *Roll. Abr.* 597. *pl.* 1. If the jury had come out of *Norfolk*, we could not have challenged the array. *Hard.* 311. Caſe for diſturbing the plaintiff in taking the profits of a judge of the ſheriffs court in *London.* On Not guilty, it was ſuggeſted, that the office was grantable by the mayor and aldermen, and prayed the *venire* to the next county. But *Hale* C. J. refuſed to award it, becauſe it did not appear by neceſſary collection from the record, that the title of the mayor and aldermen to fill up this place would come in queſtion. Though the ſituation may come in queſtion, yet that does not determine the right; for the defendants will be acquitted without trying the right, ſo that is not a matter within the extent of this ſuggeſtion. Beſides, this is a matter of law, whereas ſuggeſtions ſhould be of matters of fact only. *Co. Ent.* 59, 60. 2 *Roll. Abr.* 597. *pl.* 8. 1 *Ven.* 58, 90. *Quo warranto* 28. *Nient dedire* alone is not a confeſſion. *Cro. Jac.* 547. *Dy.* 367. *pl.* 40.

4 *C. J.*

C. J. Since it is admitted, the ſituation may come in queſtion; that will by way of conſequence determine the other point, who ought to repair; and therefore the trial could not be in *Norfolk*. I take *Nient dedire* to be as much a confeſſion, as *cognovit actionem*. The matter of law in the ſuggeſtion ariſes neceſſarily out of the matter of fact, and without it, would not be compleat. To which *Powys* J. agreed. *Et per Eyre* J. On Not guilty, the defendant may controvert every thing the proſecutor is bound to prove. He is bound to prove, where the bridges lie, and therefore *Norfolk* was an improper county. If a man would diſcharge himſelf upon a particular account, he muſt plead it ſpecially; but not where the common right is his defence. If a man is charged to repair *ratione tenurae*, he may throw it upon the pariſh by the general iſſue. The ſame ſuggeſtion was made in Sir *Richard Onſlow*'s caſe, and no exception taken. There is judgment entered in that caſe of *Hornſey*, *Paſ.* 2 *W. & M. Rot.* 31. And in the debate, as I find in my notes, *Holt* C. J. ſaid, the defendants might ſhew it not to be a highway.

Forteſcue J. thought, parcel or not parcel, could not be given in evidence on Not guilty. For 1 *Mod.* 112. *Hale* C. J. ſaid, Not guilty goes only to the repair or not; ſo that as to all other queſtions the defendant muſt plead ſpecially. And *Parker* C. J. held ſo, *Mich.* 10 *Ann.* There being three judges to one, *judicium pro rege.*

Buggery.

BUGGERY (from the *Italian bugeria*,) ſays Lord *Coke*, is a deteſtable, and abominable ſin, amongſt chriſtians not to be named, committed by carnal knowledge againſt the ordinance of the creator, and order of nature, by mankind with mankind, or with brute beaſt, or by woman kind with brute beaſt. 3 *Inſt.* 58. It was complained of in parliament (*Rot. Parl.* 50 *Ed.* 3. *N.* 58.) that the *Lombards* had brought into the realm the ſhameful ſin of ſodomy, that is not to be named, as there it is ſaid. Our ancient authors conclude, that it deſerveth death, *ultimum ſupplicium*, though they differ in the manner of the puniſhment. *Britton* (*ca.* 9.) ſaith, that ſodomites and miſcreants ſhall be burnt, and ſo were the ſodomites by Almighty God. (Gen. 19. 9.) *Fleta* ſaith, *Pecorantes & ſodomitæ in terra vivi confodiantur*: and therewith agreeth the *Mirror*, *pur le grand abhomination*, and in another place, he ſaith, *ſodomie eſt crime de majeſtie, vers le roy celeſtre.* But the judgment in all caſes of felony, is that the perſon attainted be hanged by the neck, until he, or ſhe be dead. But in ancient times in that caſe, the man was hanged, and the woman was drowned, whereof we have ſeen examples in the reign of *R.* 1. And this is the meaning of ancient franchiſes granted *de Furca, & Foſſa*, of the gallows, and

and the pit, for the hanging upon the one, and drowning in the other, but *Foſſa* is taken away, and *Furca* remains. 3 *Inſt.* 58.

Puffend. Law of Nature and Nations, b. 2. c. 3. ſ. 3.

By the *Levitical* law not only the man or woman, guilty of beſtiality, was to ſuffer death; but the beaſt was alſo put to death. This is not ſuppoſed to have been done becauſe the beaſt had offended, but for the following reaſons; that the ſeeing ſuch a beaſt might not incite in ſome other perſon the like foul paſſion; that the beaſt ſhould not, by remaining alive keep up the ſcandalous remembrance of the human offender who had ſuffered; and that the beaſt might not, as is often the caſe, bring forth ſome monſter, the ſight of which would be offenſive and hateful to all good men. A fourth reaſon, and perhaps a better one than any of theſe, is added in a note upon the paſſage. This is, that the divine author of the *Levitical* law, to make mankind ſenſible how deteſtable this crime is to him, would have every thing deſtroyed, which had any way contributed to the commiſſion thereof.

Id. ib.

The copulation of aſſes with mares, by which mules are produced, is ſaid, by St. *Ambroſe*, to be forbidden, not on the account of any guilt the beaſts contract by ſuch practices, but becauſe men are forbidden to procure ſuch unnatural mixture.

Stat. 25 *Hen.* 8. *c.* 6. [*A. D.* 1533. *intituled*] "The puniſhment of the vice of buggery."

3 Inſt. 59. He that committeth buggery with mankind, or beaſt, ſhall be adjudged a felon. Made perpetual 32 H. 8. c. 3. and repealed in part by 2 & 3 Ed. 6. c. 29. and in the whole by 1 Mar. ſeſſ. 1. c. 1. and revived and made perpetual by 5 El. c. 17.

"Foraſmuch as there is not yet ſufficient and condign puniſhment appointed and limited by the due courſe of the laws of this realm, for the deteſtable and abominable vice of buggery committed with mankind or beaſt: (2) It may therefore pleaſe the king's highneſs, with the aſſent of his lords ſpiritual and temporal, and the commons, of this preſent parliament aſſembled, that it may be enacted by authority of the ſame, That the ſame offence be from henceforth adjudged felony, and ſuch order and form of proceſs therein to be uſed againſt the offenders as in caſes of felony at the common law; (3) and that the offenders being thereof convict by verdict, confeſſion, or outlawry, ſhall ſuffer ſuch pains of death, and loſſes and penalties of their goods, chattels, debts, lands, tenements and hereditaments, as felons be accuſtomed to do, according to the order of the common laws of this realm; (4) and that no perſon offending in any ſuch offence, ſhall be admitted to his clergy; (5) and that juſtices of peace ſhall have power and authority, within the limits of their commiſſions and juriſdiction, to hear and determine the ſaid offence, as they do uſe to do in caſes of other felonies. (6) This act to endure till the laſt day of the next parliament."

The act of 25 *Hen.* 8. hath adjudged it felony, and therefore the judgment for felony doth now belong to this offence, *viz.* to be hanged by the neck till he be dead. He that readeth the preamble of this act, will ſee the neceſſity of reading our ancient authors: the ſtatute doth take away the benefit of clergy from the delinquent. 3 *Inſt.* 59.

The

The words, *amongſt Chriſtians not to be named*, are in the uſual indictment for this offence, and are in effect in the parliament roll of 50 *Ed.* 3. *nu.* 58. 3 *Inſt.* 59.

The words of the indictment are, *Contra ordinationem creatoris, et naturæ ordinem, rem habuit veneream, dictumque puerum carnaliter cognovit, &c.* So that there muſt be *penetratio*, that is, *res in re*, either with mankind, or with beaſt, but the leaſt penetration maketh it carnal knowledge. See the indictment of *Stafford*, (*Co. Ent.* 352.) which was drawn by great advice, for committing buggery with a boy, for which he was attainted and hanged. 3 *Inſt.* 59.

The Sodomites, ſays lord *Coke*, came to this abomination by four means, *viz.* by pride, exceſs of diet, idleneſs, and contempt of the poor. *Otioſus nihil cogitat, niſi de ventre & venere.* Both the agent and perſon conſenting are felons: and this is conſonant to the law of God. *Lev. c.* 20. *v.* 30. 1 *Cor. c.* 6. *v.* 10. And this accordeth with the ancient rule of law, *Agentes & conſentientes pari pœna plectentur.* 3 *Inſt.* 59.

Emiſſio ſeminis maketh it not buggery, but is an evidence in caſe of buggery of penetration: and ſo in rape the words are alſo *carnaliter cognovit*, and therefore there muſt be penetration; and *emiſſio ſeminis* without penetration maketh no rape. If the party buggered be within the age of diſcretion, it is no felony in him, but in the agent only. When any offence is felony either by the common law, or by ſtatute, all acceſſories both before and after, are incidently included. So if any be preſent, abetting and aiding any to do the act, though the offence be perſonal, and to be done by one only, as to commit rape, not only he that doth the act is a principal, but alſo they who are preſent, abetting, and aiding the miſdoer, are principals alſo, which is a proof of the other caſe of ſodomy. 3 *Inſt.* 59.

This ſtatute extends as well to a woman, as to a man; and therefore if ſhe commit buggery with a beaſt, ſhe is a *perſon* guilty of this offence; and therefore the word *perſon* is uſed in the act. And the rather, for that ſome time before the making of this act, a great lady had committed buggery with a baboon, and had conceived by it, *&c.* 3 *Inſt.* 59.

By the articles of the navy (22 *Geo.* 2. *c.* 33.) if any perſon in the fleet ſhall commit the unnatural and deteſtable ſin of buggery or ſodomy, with a man or beaſt; he ſhall be puniſhed with death by the ſentence of a court martial.

Burglary.

BURGLARY is a felony at the common law, in breaking and entering the manſion houſe of another, or, as ſome ſay, the walls or gates of a walled town in the night, to the intent to commit ſome felony within the ſame, whether the felonious intent be executed or not. 1 *Hawk. P. C.* 101.

In breaking] It ſeems agreed, that ſuch a breaking as is implied by law in every unlawful entry on the poſſeſſion of another, whether it lie open or be incloſed, and will maintain a common indictment, or action of treſpaſs, *quare clauſum fregit*, will not ſatisfy the words *felonicè & burglariter fregit*, except in ſome ſpecial caſes, in which it is accompanied with ſuch circumſtances as make it as heinous as an actual breaking: and from hence it follows, that if one enter into a houſe by a door which he finds open, or through a hole which was made there before, and ſteal goods, *&c.* or draw any thing out of a houſe through a door or window which were open before; or enter into a houſe by the doors open in the day-time, and lie there till night, and then rob and go away, without breaking any part of the houſe, he is not guilty of burglary. But it is certain, that he would have been guilty thereof if he had opened the window, or unlocked the door, or broken a hole in the wall, and then had entered, *&c.* or if having entered by a door which he found open, or having lain in the houſe by the owner's conſent, he had but unlatched a chamber-door; or if he had come down by the chimney: (in which caſe though it might be ſaid, that the houſe was open there, and ſo not actually broken; yet it was as much incloſed as the nature of the thing would bear.) And according to ſome opinions, he would have been in like manner guilty, if upon an aſſault made by him upon the houſe, with an intent to rob it, the owner had opened the door in order to drive him off, and thereupon he had entered: (in which caſe, as ſome ſay, the opening of the door by the owner, being occaſioned by the felonious attempt of the other, is as much imputable to him as if it had been actually done by his own hands.) 1 *Hawk. P. C.* 102.

And it has alſo been reſolved, that where divers perſons came to a houſe with an intent to rob it, and knocked at the door, pretending to have buſineſs with the owner, and being by that means let in, rifled the houſe, they were guilty of burglary. Alſo it hath been adjudged, that thoſe were no leſs guilty, who having a deſign to rob a houſe, took lodgings in it, and then fell on the landlord and robbed him; for the law will not endure to have its juſtice defrauded by ſuch evaſions. And for the like reaſon, *à fortiori* it has been reſolved, that where perſons, intending to rob a houſe, raiſed a hue and cry, and prevailed with a conſtable to make a ſearch in the houſe, and having got in by that means, with the owner's conſent, bound the conſtable, and robbed the inhabitants, they were guilty of burglary; for there cannot be a greater affront to publick juſtice,

juſtice, than to make uſe of legal proceſs as a ſtale for ſuch villainous purpoſes; and therefore the whole act is eſteemed tortious *ab initio*. 1 *Hawk. P. C.* 102.

And lord *Hale* ſays the following acts amount to an actual breaking, *viz.* opening the caſement, or breaking the glaſs window, picking open a lock of a door with a falſe key, or putting back the lock with a knife or dagger, unlatching the door that is only latched, to put back the leaf of a window with a dagger, to take down a pane of glaſs of a glaſs window by taking out or bending aſide the nails that faſten it, is a breaking, becauſe the glaſs-window is parcel of the houſe. 1 *Hal. H. P. C.* 552.

One of the ſervants in the houſe opened his lady's chamber door (which was faſtened with a braſs bolt) with deſign to commit a rape: and C. J. *King* ruled it to be burglary, and the defendant was convicted, and tranſported. 1 Stran. 481. Mich 8 G. 1. Rex v. Gray.

He was indicted with another perſon for burglary. And upon the evidence it appeared that he was a ſervant in the houſe where the robbery was committed, and in the night-time opened the ſtreet-door, and let in the other priſoner, and ſhewed him the ſide-board, from whence the other priſoner took the plate: then the defendant opened the door and let him out; but the defendant did not go out with him, but went to bed. Upon the trial before lord chief juſtice *Raymond*, juſtice *Denton* and baron *Comyns* at the *Old-Bailey*, it was doubted, whether this was burglary in the ſervant, he not going out with the other: and it being laid down in *H. P. C.* 81. *Dalt.* 317. that it is not burglary in the ſervant; the judges ordered it to be found ſpecially. And afterwards at a meeting of all the judges at *Serjeants-Inn*, they were all of opinion that it was burglary in both, and not to be diſtinguiſhed from the caſe that had been often ruled and allowed in the ſame page in *Hale*, that if one watches at the ſtreet end while the others go in, it is burglary in all: and upon report of this opinion the next ſeſſions the defendant was executed. Servant lets in a thief, it is burglary. 2 Stran. 881. Joſhua Cornwal's caſe.

At a meeting of the judges, ſays Mr. juſtice *Foſter*, upon a ſpecial verdict in *January* 1690. they were divided upon the queſtion, whether breaking open the door of a cupboard let into the wall of the houſe was burglary or no. *Hale* ſaith that ſuch breaking is not burglary at common law; but thinketh it would be ſufficient to bring the caſe within the ſtatutes I have juſt cited. This diſtinction he groundeth on *Simpſon*'s caſe, and even ſaith that in that caſe the breaking open a cheſt in the houſe brought the caſe within the 39th of *Eliz.* which, I ſpeak it with great deference, if a moveable cheſt be meant, cannot be law. *Simpſon*'s caſe, as truly ſtated by *Hale* in one part of his work, (2 *Hal.* 358.) and by *Kelyng*, (31) doth not in my opinion warrant any ſuch diſtinction. It did not, nor poſſibly could, turn on the circumſtance of breaking a cheſt or fixed cupboard or any thing like it; nor doth it appear from the ſtate of the caſe, that there was the leaſt occaſion to reſort to any ſuch conſtructive breaking. For in fact, both outer and inner doors were broke open. The caſe, in my opinion, turned ſingly on this point. The man had broke open the cheſt and brought the goods into the hall in order to carry them off, but Foſt. Rep. 108, 109.

was apprehended in the houſe. It was made a queſtion whether this amounted to a ſtealing *in* the houſe within the 39th of *Eliz.* and it was held that it did: the man had once poſſeſſed himſelf of the goods *animo furandi.* This at common law, amounted to a caption and aſportation, otherwiſe few perſons who are taken in the fact, could be convicted of larceny, and this being ſo, the conſtruction of the ſtatute muſt be accommodated to the rules of the common law in like caſes. With regard to cupboards, preſſes, lockers, and other fixtures of the like kind, I think we muſt, in favour of life, diſtinguiſh between caſes relative to mere property, and ſuch wherein life is concerned. In queſtions between the heir or deviſee and the executor, thoſe fixtures may with propriety enough be conſidered as annexed to, and parts of the freehold. The law will preſume that it was the intention of the owner *under whoſe bounty the executor claimeth*, that they ſhould be ſo conſidered; to the end that the houſe might remain to thoſe, who, by operation of law, or by his bequeſt, ſhould become intitled to it, in the ſame plight he put it or ſhould leave it, entire and undefaced. But in capital caſes, I am of opinion, that ſuch fixtures which merely ſupply the place of cheſts and other ordinary utenſils of houſhold, ſhould be conſidered in no other light than as mere moveables, partaking of the nature of thoſe utenſils and adapted to the ſame uſe.

And entering] It ſeems agreed, that any the leaſt entry, either with the whole, or but with part of the body, or with any inſtrument, or weapon, will ſatisfy the word *intravit* in an indictment of burglary; as if one do but put his foot over a threſhold, or his hand, or a hook, or piſtol, within a window, or turn the key of a door which is locked on the inſide, or diſcharge a loaded gun into a houſe, *&c.* Nay, it is certain, that in ſome caſes one may be guilty of burglary, who never made any actual entry at all; as where divers come to commit a burglary together, and ſome ſtand to watch in adjacent places, and the others enter and rob, *&c.* for in all ſuch caſes, the act of one is in judgment of law the act of all. And upon the like ground, I can ſee no reaſon why a ſervant, who, confederating with a rogue, lets him in to rob a houſe, *&c.* ſhould not be guilty of burglary as much as he; for it is clear, that if the ſervant were out of the houſe, the entry of the other would be adjudged to be his alſo; and what difference is there, when he is in the houſe? 1 *Hawk. P. C.* 103.

Foſt. Rep. 107, 108.

At the *Old-Bailey* in *June* 1752, preſent Lord chief baron, Mr. juſtice *Foſter*, and Mr. juſtice *Birch*, *George Gibbons* was indicted for burglary in the dwelling-houſe of *John Allen.* It appeared in evidence that the priſoner in the night-time cut a hole in the window ſhutters of the proſecutor's ſhop, which was part of his dwelling-houſe; and putting his hand thro' the hole took out watches and other things which hung in the ſhop within his reach: but no entry was proved otherwiſe than by putting his hand through the whole. This was held to be burglary and the priſoner was convicted. 3 *Inſt.* 64.——*N. B.* This hath been always ſo held. The law requireth an entry, to complete the crime of burglary, but if

any

any part of the body be within the houſe, hand or foot, this at common law is ſufficient. And I conceive that ſuch a kind of entry will be ſufficient to bring the caſe within the ſtatutes of *Ed.* 6. and *Eliz.* with regard to houſe-breaking attended with larceny in the day-time. I am likewiſe of opinion, ſays Mr. juſtice *Foſter*, that with regard to the ſingle point of breaking the houſe, whatever kind of breaking will make a man guilty of burglary at common law, will bring him within thoſe ſtatutes; and that no act of violence ſhort of a common law burglary, will.

Manſion-houſe] It ſeems to be the current opinion at this day, that it can be only in a dwelling-houſe, and that the indictment for it muſt neceſſarily alledge the fact *in domo manſionali.* And Sir *Edward Coke* ſeems to ſay, that the breaking a church, *&c.* is therefore burglary, becauſe the church is the manſion-houſe of God: but I can find nothing in the more ancient authors to countenance this nicety; for the general tenor of the old books ſeems to be, that burglary may be committed in breaking houſes, or churches, or the walls, or gates of a town. And *Standford* and *Anderſon* mention precedents of indictments of burglary *in domo*, without adding *manſionali:* however the conſtant courſe of late precedents and opinions makes it certainly a very dangerous, if not an incurable fault, to omit the word *manſionalis* in an indictment of burglary in a houſe; and therefore without queſtion, it ought always to be inſerted, where the truth of the caſe will bear it. But ſure it cannot be neceſſary or proper to have any ſuch word in an indictment of burglary in a church, which by all the books above cited, ſeems to be taken as a diſtinct burglary from that in a houſe. 1 *Hawk. P. C.* 103.

However it is agreed by all, that a houſe wherein a man dwells but for part of the year, or a houſe which one has hired to live in, and brought part of his goods into, but has not yet lodged in; or a chamber in one of the inns of court wherein a perſon uſually lodges, or a houſe which a man's wife hires without his privity, and lives in by herſelf without him, may be called his dwelling-houſe; and will ſufficiently ſatisfy the words *domus manſionalis* in the indictment, whether any perſon were actually therein, or not, at the time of the offence. 1 *Hawk.* 103.

Alſo all out-buildings, as barns, ſtables, dairy-houſes, *&c.* adjoining to a houſe, are looked upon as part thereof, and conſequently burglary may be committed in them; but if they be removed at any diſtance from the houſe, it ſeems that it has not been uſual of late to proceed againſt offences therein as burglaries. 1 *Hawk.* 104.

If ſeveral perſons dwell in one houſe as ſervants, gueſts, or tenants at will, or otherwiſe having no fixed and certain intereſt in any part thereof, and a burglary be committed in any of their apartments; it ſeems clear, that the indictment ſhall lay the offence in the manſion-houſe of the proprietor, *&c.* But if one hire a diſtinct apartment in a houſe for his lodging for a certain time, and a burglary be committed therein, I can ſee no good reaſon why the indictment may not lay the offence *in domo manſionali* of the owner of the chamber; and why may not ſuch an apartment, with as much propriety, be called the manſion-houſe of him that takes

it, during the time that he has a certain intereſt in it? For ſo long as it is ſevered by the leaſe, it ſeems in the eye of the law to be as diſtinct from the other parts of the houſe, as if the perſon who rents it, had a freehold or inheritance in it. And as to the objection, that he goes into the houſe by the ſame door with the other inhabitants, and therefore is but an inmate, and the whole ought to be conſidered but as one houſe; I anſwer, that he muſt have ſome way to his apartment as incident to his intereſt in it, and that ſuch way lying through a door which is common to him with others, doth not make the apartment itſelf in any reſpect leſs his own, than a way through a door belonging to himſelf only would have done. 1 *Haw.* 104.

And if the law be ſo in this caſe, it ſeems to me very reaſonable alſo, that if ſuch a lodger takes alſo a cellar in the ſaid houſe, a burglary committed in ſuch cellar, may be alledged *in domo manſionali* of the lodger, whether the cellar had any communication with the houſe or not; for ſince it ſeems to be agreed, that a barn or ſtable, or other out-building near to a houſe, ſhall be looked on as part thereof, why ſhould not ſuch a cellar have the like eſtimation? *Sed quære*; for *Kelynge* (83) ſeems to incline to a different opinion. 1 *Haw.* 104.

However it is agreed by all, that if one hire a part of a houſe to lodge in, which is actually divided from the reſt, and have a door of its own to the ſtreet, a burglary therein may be alledged *in domo manſionali* of ſuch perſon. 1 *Haw.* 104.

But if he had taken it as a ſhop or work-houſe for his uſe in the day-time only, it ſeems that a felony therein cannot be alledged in a manſion-houſe, not of him that lets it, becauſe it is ſevered by the leaſe from that part of the houſe which belongs to him, nor of him to whom it is let, becauſe he takes it not to lodge in. 1 *Haw.* 104.

From what has been ſaid, it clearly appears, that no burglary can be committed by breaking into any ground incloſed, or booth, or tent, *&c.* for there ſeems to be no colour from any authority ancient or modern, to make any offence burglary, that is not done either againſt ſome houſe, or church, or the walls, or gates of ſome town. 1 *Haw.* 104.

Foſt. Rep. 76, 77. At *Newgate* ſeſſions in *January* 1750, *John Nutbrown* and *Miles Nutbrown* were indicted for burglary in the dwelling-houſe of one Mr. *Fakney* at *Hackney*, and ſtealing divers goods. It appeared by Mr. *Fakney*'s evidence, that he held this houſe for a term of years which is not yet expired, and made uſe of it as a country-houſe in the ſummer, his chief reſidence being in *London*. That about the latter end of the laſt ſummer, he removed with his whole family to his houſe in the city, and brought away a conſiderable part of his goods: that in *November* laſt his houſe was broke open and in part rifled; upon which he removed the remainder of his houſhold furniture, except a clock, and a few old bedſteads, and ſome lumber of very little value; leaving no bed or kitchen furniture, or any thing elſe for the accommodation of a family. Mr. *Fakney* being aſked whether at the time he ſo diſfurniſhed his houſe he had any intention of returning to reſide there, declared that he had not come to any ſettled reſolution

lution whether to return or not; but was rather inclined totally to quit the houſe, and to let it for the remainder of his term. The fact the priſoners were charged with was ſufficiently proved; and was committed about midnight the firſt of *January* laſt. The court was of opinion, that the proſecutor having left his houſe, and diſfurniſhed it in the manner before mentioned, without any ſettled reſolution of returning, but rather inclining to the contrary, it could not, under theſe circumſtances, be deemed *his* dwelling-houſe at the time the fact was committed. And accordingly directed the jury to acquit the priſoners of the burglary, which they did; but found them guilty of felony in ſtealing the clock and ſome other ſmall matters. And they were ordered for tranſportation.—*N. B.* Where the owner quitteth the houſe *animo revertendi*, it may ſtill be conſidered as his manſion-houſe, though no perſon be left in it; many citizens, and ſome lawyers, do ſo from a principle of good huſbandry in the ſummer or for a long vacation. See *Pop.* 42, 52. 4 *Co.* 40. and MSS. *Denton* and *Chapple*, a caſe upon a burglary in the houſe of Mr. *Nichols*, *Eaſter* ſeſſions 10 *Will.* 3. But there muſt be an intention of returning, otherwiſe it will not be burglary.

In the night] There are ſome opinions, that burglary may be committed any time after ſun-ſet, and before ſun-riſing; but it ſeems the much better opinion, that the word *noctanter*, which is preciſely neceſſary in every indictment for this offence, cannot be ſatisfied in a legal ſenſe, if it appear upon the evidence, that there was ſo much day-light at the time, that a man's countenance might be diſcerned thereby. 1 *Haw.* 101, 102.

To the intent to commit ſome felony] It ſeems clear, that there can be no burglary but where the indictment both expreſly alledges, and the verdict alſo finds, an intention to commit ſome felony; for if it appear that the offender meant only to commit a treſpaſs, as to beat the party, *&c.* he is not guilty of burglary. However, it ſeems much the better opinion, that an intention to commit a rape, or ſuch other crime which is made felony by ſtatute, and was a treſpaſs only at common law, will make a man guilty of burglary, as much as if ſuch offence were a felony at common law, becauſe where-ever a ſtatute makes any offence felony, it incidentally gives it all the properties of a felony at common law. 1 *Haw.* 104, 105.

Stat. 24 *Hen.* 8. *c.* 5. [*A. D.* 1532. *intituled*] "That a man killing a thief in his defence, ſhall not forfeit his goods."

"Foraſmuch as it hath been in queſtion and ambiguity, that if any evil diſpoſed perſon or perſons do attempt felonioufly to rob or murder any perſon or perſons in or nigh any common high-way, cart-way, horſe-way, or foot-way, or in their manſions, meſſuages, or dwelling places, or that felonionſly do attempt to break any dwelling houſe in the night-time, ſhould happen, in his or their being in their ſuch felonious intent, to be ſlain. 2 Inſt. 56, 63, 220. Bracton 144. b. 1 Anderſ. 412.

ſlain by him or them whom the ſaid evil doers ſhould ſo attempt to rob or murder, or by any perſon or perſons, being in their dwelling houſe, which the ſame evil doers ſhould ſo attempt burglarily to break by night; if the ſaid perſon ſo happening in ſuch caſes to ſlay any ſuch perſon, ſo attempting to commit ſuch murder or burglary, ſhould for the death of the ſaid evil-diſpoſed perſon forfeit or loſe his goods and chattels for the ſame, as any other perſon ſhould do that by chance-medley ſhould happen to kill or ſlay any other perſon in his or their defence; (2) for the declaration of the which ambiguity and doubt, Be it enacted by the king our ſovereign lord, with the aſſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons, at any time hereafter, be indicted or appealed of or for the death of any ſuch evil diſpoſed perſon or perſons, attempting to murder, rob, or burgarily to break manſion-houſes, as is above ſaid, that the perſon or perſons ſo indicted or appealed thereof, and of the ſame by verdict ſo found and tried, ſhall not forfeit or loſe any lands, tenements, goods or chattels, for the death of any ſuch evil diſpoſed perſon in ſuch manner ſlain, but ſhall be thereof, and for the ſame fully acquitted and diſcharged, in like manner as the ſame perſon or perſons ſhould be if he or they were lawfully acquitted of the death of the ſaid evil diſpoſed perſon or perſons."

There ſhall be no forfeiture of lands or goods for the killing of any perſon that attempted to murder or rob.

Stat. 18 *Eliz. c.* 7. [*A. D.* 1576. *intituled*] "An act to take away clergy from the offenders in rape or burglary, and an order for the delivery of clerks convict without purgation."

3 Inſt. 65, 214. Hob. 291.

"For the repreſſing of the moſt wicked and felonious rapes or raviſhments of women, maids, wives and damoſels, and of felonious burglaries, and for the avoiding of ſundry perjuries and other abuſes, in and about the purgation of clerks convict, delivered to the ordinaries, (2) Be it enacted and ordained by the authority of this preſent parliament, That if any perſon or perſons ſhall fortune at any time after the firſt day of *June* next enſuing, to commit or do any manner of felonious rape, raviſhment or burglary, and to be found guilty by verdict, of any ſuch felonious rape or burglary, (3) or that any perſon or perſons ſhall fortune to be outlawed for any of the offences aforeſaid, (4) or upon his or their arraignment ſhall confeſs any ſuch felonious rape or burglary, (5) That in every ſuch caſe, every perſon and perſons ſo being found guilty, outlawed, or confeſſing any of the ſaid felonious rapes or burglaries, ſhall ſuffer pains of death, and forfeit, as in caſes of felony hath been uſed and accuſtomed by the common laws of this realm, without any allowance of the privilege or benefit of clergy; any law, cuſtom or uſage heretofore had, made or uſed to the contrary notwithſtanding.

None ſhall have clergy that committeth rape or burglary. 11 Co. 33.

Sect. 2. "And moreover, be it further enacted by the authority aforeſaid, That every perſon and perſons, which at any time after the end of this preſent ſeſſion of parliament, ſhall be admitted and allowed to have the benefit or privilege of his or their clergy, ſhall not thereupon be delivered

No man allowed his clergy ſhall be committed to the ordinary, but pre-

livered to the ordinary, as hath been accuſtomed, but after ſuch clergy allowed, and burning in the hand, according to the ſtatute in that behalf provided, ſhall forthwith be enlarged and delivered out of priſon by the juſtices before whom ſuch clergy ſhall be granted, that cauſe notwithſtanding.

ſently delivered. 4 H. 7. c. 13. 3 Ed. 1. c. 2. 5 Co 110. Cro. Jac. 430.

Sect. 3. "Provided nevertheleſs, and be it alſo enacted by the authority aforeſaid, That the juſtices, before whom any ſuch allowance of clergy ſhall be had, ſhall and may, for the further correction of ſuch perſons to whom clergy ſhall be allowed, detain and keep them in priſon for ſuch convenient time as the ſame juſtices in their diſcretions ſhall think convenient, ſo as the ſame do not exceed one year's impriſonment; any law or uſage heretofore had or uſed to the contrary in any wiſe notwithſtanding."

The juſtices may retain offenders in priſon for a time. 2 Bulſt. 137.

Sect. 4. "And for plain declaration of law, Be it enacted, That if any perſon ſhall unlawfully and carnally know and abuſe any woman-child under the age of ten years, every ſuch unlawful and carnal knowledge ſhall be felony, and the offender thereof being duly convicted, ſhall ſuffer as a felon without allowance of clergy."

To know a woman carnally, under the age of ten years, ſhall be felony.

Sect. 5. "Provided always, That all and every perſon and perſons, which ſhall hereafter be admitted to have the benefit of his or their clergy, ſhall notwithſtanding his or their admiſſion to the ſame, be put to anſwer to all other felonies whereof he or they ſhall be hereafter indicted or appealed, and not being thereof before acquitted, convicted, attainted or pardoned, (2) and ſhall in ſuch manner and form be arraigned, tried, adjudged and ſuffer ſuch execution for the ſame, as he or they ſhould have done, if, as clerk or clerks convict, they had been delivered to the ordinary, and there had made his or their purgations; any thing in this act contained to the contrary notwithſtanding."

He that is allowed his clergy, ſhall anſwer to other felonies. 25 Ed. 3. ſtat. 3 & 4. c. 5. 8 El. c. 4. Dyer 214. pl. 48.

Stat. 3 *Will. & Ma. c.* 9. [*A. D.* 1691. *intituled*] "An act to take away clergy from ſome offenders, and to bring other to puniſhment."

"Foraſmuch as divers wicked and ill diſpoſed perſons are encouraged to commit robberies upon mens perſons, and in their houſes, and other offenders, by the privilege, as the law now is, of demanding the benefit of their clergy: Be it therefore enacted by the king's and queen's moſt excellent majeſties, and by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and every perſon or perſons that ſhall, at any time from and after the firſt day of *March* in the year of our lord one thouſand ſix hundred ninety-one, rob any other perſon, or ſhall feloniouſly take away any goods or chattel, being in any dwelling-houſe, the owner or any other perſon being therein, and put in fear, or ſhall rob any dwelling-houſe in the day time, any perſon being therein, or ſhall comfort, aid, abet, aſſiſt, counſel, hire or command any perſon or perſons to commit any of the ſaid offences, or to break any dwelling-houſe, ſhop, or warehouſe thereunto belonging, or therewith uſed, in the day time, and feloniouſly take away any money, goods, or chattel of the value of five ſhillings

Any perſon convict of robbing a dwelling-houſe wherein there is any or no perſon, &c. ſtanding mute, ſhall loſe his clergy.

ſhillings or upwards, therein being, although no perſon ſhall be within ſuch dwelling-houſe, ſhop or warehouſe, or ſhall counſel, hire or command any perſon to commit any burglary, being thereof convicted or attainted, or being indicted thereof ſhall ſtand mute, or will not directly anſwer to the indictment, or ſhall peremptorily challenge above the number of twenty perſons returned to be of the jury, ſhall not have the benefit of his or their clergy."

Stat. 10 & 11 *Will.* 3. *c.* 23. [*A. D.* 1699. *intituled*] "An act for the better apprehending, proſecuting, and puniſhing of felons, that commit burglary, houſe-breaking or robbery in ſhops, ware-houſes, coach-houſes or ſtables, or that ſteal horſes."

"Whereas the crimes of burglary and breaking open of houſes in a felonious manner, and the crime of ſtealing goods privately out of ſhops and ware-houſes, commonly called *Shop-lifting*, and the ſtealing of horſes, are of late years much increaſed, to the great detriment and unſpeakable loſs of many of your majeſty's good ſubjects, occaſioned for want of due proſecution and puniſhment of offenders therein, and for want of encouragement to ſuch as ſhall vigorouſly endeavour the apprehending of ſuch malefactors: For preventing whereof, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and every perſon and perſons, that ſhall at any time or times, by night or in the day-time, from and after the twentieth day of *May*, which ſhall be in the year of our lord one thouſand ſix hundred ninety-nine, in any ſhop, ware-houſe, coach-houſe or ſtable, privately and felonioufly ſteal any goods, wares, or merchandizes, being of the value of five ſhillings, or more (although ſuch ſhop, ware-houſe, coach-houſe or ſtable be not actually broke open by ſuch offender or offenders, and although the owners of ſuch goods, or any other perſon or perſons be or be not in ſuch ſhop, ware-houſe, coach-houſe or ſtable to be put in fear), or ſhall aſſiſt, hire, or command any perſon or perſons to commit ſuch offence, being thereof convicted or attainted by verdict or confeſſion, or being indicted thereof ſhall ſtand mute, or will not directly anſwer to the indictment, or ſhall peremptorily challenge above the number of three and twenty perſons returned to be of the jury, ſhall, by virtue of this act, be abſolutely debarred and excluded of and from the benefit of the clergy.

Perſon ſtealing goods in any ſhop, ware-houſe, *&c.* of 5 s. value or more,

or aſſiſting therein, excluded from benefit of clergy.

Sect. 2. "And be it enacted by the authority aforeſaid, That from and after the ſaid twentieth day of *May* one thouſand ſix hundred and ninety-nine, all and every perſon and perſons, who ſhall apprehend and take any perſon guilty of any the felonies before mentioned, and proſecute him, her or them, ſo apprehended and taken, until he, ſhe or they be convicted of any the aforeſaid felonies, ſuch apprehenders and takers, for his, her or their reward, upon every ſuch conviction, without any fee or reward to be paid for the ſame, ſhall have, forthwith after every ſuch conviction, a certificate

Proſecutor of felon to have a certificate.

cate

cate which ſhall be under the hand or hands of the judge, juſtice or juſtices before whom every ſuch conviction ſhall be had, certifying ſuch conviction, and alſo within what pariſh or place the felony was committed, whereof any ſuch perſon or perſons was or were convicted, as aforeſaid, and alſo that ſuch felon or felons was or were diſcovered and taken, or diſcovered or taken by the perſon or perſons ſo diſcovering or apprehending any the ſaid felon or felons; and in caſe any diſpute ſhall happen to ariſe between any of the perſons ſo diſcovering or apprehending any the ſaid felon or felons, ſo convict as aforeſaid, touching their right or title to the ſaid certificate, that then the ſaid judge, juſtice or juſtices, or the major part of them ſo reſpectively making ſuch certificate as aforeſaid, ſhall, in and by his or their certificate, direct and appoint the ſaid certificate into ſo many ſhares, to be divided amongſt the perſons therein concerned, as to the ſaid judge, juſtice or juſtices or the major part of them ſhall ſeem juſt and reaſonable, which certificate ſhall and may be once aſſigned over and no more, and the original proprietor of ſuch certificate, or the aſſignee of the ſame, whoſoever of them ſhall have the intereſt therein, by virtue thereof and of this preſent act, ſhall and may be diſcharged of and from all and all manner of pariſh and ward offices, within the pariſh or ward wherein ſuch felony or felonies ſhall be committed, and ſuch party or aſſignee is hereby declared to be diſcharged therefrom; which ſaid certificate ſhall be enrolled by the clerk of the peace of the county, in which the ſame ſhall be granted; for which enrollment the ſaid clerk of the peace of the county or city, in which the ſame ſhall be granted, ſhall have for his fee the ſum of one ſhilling, and no more."

In caſe of diſpute, judge to appoint the certificate into ſhares. Altered by 6 Geo. 1. c. 23. ſ 8. By 5 Annæ, c. 31. ſ 1. Apprehenders of burglars and houſe breakers have a farther reward of 40l. Certificate may be once aſſigned. Aſſignee diſcharged from pariſh and ward offices. Certificate to be inrolled. Fee.

Sect. 3. "Provided nevertheleſs, That if any perſon having ſuch certificate, ſhall at any time make uſe of the ſaid certificate to exempt him from any pariſh or ward office, ſuch perſon ſo making uſe of the ſaid certificate, or any other perſon or perſons claiming any intereſt therein, ſhall not aſſign over the ſaid certificate to any perſon or perſons whatſoever." Proviſo.

Sect. 4. "And be it further enacted, That in caſe any perſon or perſons ſhall happen to be ſlain by any ſuch houſe-breakers, horſe-ſtealers, or other felon aforeſaid, by endeavouring to apprehend, or in making purſuit after him, her or them, or any of them, that then the executors or adminiſtrators of ſuch perſon or perſons ſo ſlain, to whom the right of adminiſtration of the perſonal eſtate of every perſon ſo ſlain ſhall belong, ſhall have the ſaid certificate, in manner as aforeſaid, without fee or reward as aforeſaid." If perſons be ſlain in purſuit of houſe-breakers, &c. Executor to have the certificate, without fee.

Sect. 5. "And be it further enacted, That if any perſon or perſons, from and after the ſaid twentieth day of *May* in the ſaid year of our lord one thouſand ſix hundred ninety and nine, ſhall commit any burglary, houſe-breaking or felony, in ſtealing of any horſe or horſes, or any money, wares or goods, from whom the benefit of the clergy is by this act taken away, and being out of priſon, ſhall diſcover two or more perſon or perſons, who already hath or hereafter ſhall commit any ſuch burglary, horſe-ſtealing or felony as aforeſaid, and ſhall be convicted thereof, or cauſe to be diſcovered and apprehended two perſons or more, who ſhall be convicted, as afore- Houſe-breakers, &c. diſcovering two or more felons, intitled to the king's pardon,

aforeſaid, every ſuch diſcoverer ſhall have, and is hereby intitled to his majeſty's moſt gracious pardon, for the burglaries, houſe-breakings, horſe-ſtealings or felonies, as aforeſaid, which he, ſhe, or they ſhall have committed at any time or times before ſuch diſcovery made; which pardon ſhall be likewiſe a good bar to any appeal brought or to be brought for any ſuch burglary, houſe-breaking, horſe-ſtealing or felony."

and to be a good bar to appeal.

Sect. 6. "And foraſmuch as many evil-diſpoſed perſons might be deterred from offending, ſhould the puniſhment by law to be inflicted on ſuch perſons be made more viſible: Be it further enacted, That, from and after the ſaid twentieth day of *May* one thouſand ſix hundred ninety-nine, all and every perſon and perſons who ſhall be convicted of or for any theft or larceny, and ſhall have the benefit of the clergy allowed thereupon, or ought to be burnt in the hand for ſuch offence, inſtead of being burnt in the hand, ſhall with the uſual mark wherewith ſuch offenders, according to the laws now in force, ought to be burnt in the hand, be burnt in the moſt viſible part of the left cheek neareſt the noſe, which puniſhment ſhall be inflicted in open court, in the preſence of the judge, who is hereby directed and required to ſee the ſame ſtrictly and effectually executed; any former law or ſtatute to the contrary thereof in any wiſe notwithſtanding."

Perſons convicted of theft or larceny, inſtead of burning in the hand, to be burnt in the left cheek in open court. Repealed by 5 Anne, c. 6. ſ. 1.

Sect. 7. "And whereas the great fees, that are often demanded and received by clerks of aſſize, of perſons that appear as witneſſes againſt felons, tend very much to the diſcouraging their conviction, to the great damage of his majeſty's good ſubjects: To remedy the ſame for the future, Be it enacted, That no clerk of aſſize, clerk of the peace, or other perſon whatſoever ſhall demand, take or receive any fee or reward of any perſon whatſoever, that ſhall be bound by any juſtice of the peace to appear to give evidence againſt any traitor or felon, for the diſcharge of any recognizance for ſuch appearance, nor ſhall demand or receive more than two ſhillings for the drawing any bill of indictment againſt any ſuch felon; upon the pain of forfeiting to the perſon aggrieved, for every ſuch offence, the ſum of five pounds, with full coſts of ſuit."

Evidence to pay no fee, &c.

Fee for bill of indictment.

Sect. 8. "And whereas it often happens that clerks of aſſize, clerks of the crown, clerks of the peace, clerks of the indictments, or other proper officers, their clerks, or deputies, do draw bills defective: Be it enacted, That if any clerk of aſſize, clerk of the crown, clerk of the peace, clerk of the indictments, or other proper officer, or their clerks or deputies, ſhall draw any bill defective, they ſhall draw new bills without demanding any fee or reward whatſoever, or forfeit the ſum of five pounds, with full coſts of ſuit, and that all the forfeitures aforeſaid ſhall be recovered by him, her or them that will ſue for the ſame, by action of debt, bill, plaint or information, in any of his majeſty's courts of record, wherein no eſſoin, protection, or wager of law ſhall be allowed."

Clerk of aſſize, &c. drawing defective bill, to draw a new one gratis. Penalty.

Stat. 5 *Ann. c.* 31. [*A. D.* 1706. *intituled*] "An act for encouraging the diſcovery and apprehending of houſe-breakers."

1. "Whereas the crimes of burglary and breaking open houſes in a felonious manner, are of late years become more frequent than formerly, to the

the great diſquiet, terror and impoveriſhing of many of your majeſty's good ſubjects; which crimes might be, in great meaſure, prevented, if due encouragement be given to ſuch as ſhall vigorouſly endeavour the diſcovery and apprehending of ſuch malefactors, and ſome ſevere puniſhment inflicted on ſuch as ſhall receive or buy ſtolen goods, and harbour and protect the ſaid offenders: For remedy whereof, Be it enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the tenth day of *May* one thouſand ſeven hundred and ſeven, all and every perſon and perſons who ſhall apprehend and take any perſon or perſons guilty of burglary, or the felonious breaking and entering of any houſe in the day-time, and proſecute him, her or them ſo apprehended and taken, until he, ſhe or they be convicted of ſuch burglary and felony, ſhall have and receive, over and above the rewards given by one act of parliament made at *Weſtminſter* in the tenth and eleventh years of the reign of his late majeſty king *William* of glorious memory, intituled, "An act for the better apprehending, preventing and puniſhing of felons that commit burglary, houſe-breaking, or robbery in ſhops, warehouſes, coach-houſes, or ſtables, or that ſteal horſes," the ſum of forty pounds within one month after ſuch conviction, to be paid by the ſheriff or ſheriffs of the county where ſuch felony or burglary ſhall be made and done, without any fee for the ſame, to the perſon or perſons ſo taking, apprehending and proſecuting the ſaid offenders, he and they tendring a certificate to the ſaid ſheriff or ſheriffs, under the *hand or* hands of the judges or juſtices before whom ſuch felon ſhall be convicted for ſuch burglary or felony, certifying the conviction of ſuch felon for the ſaid offence or offences, and in what pariſh the ſame was committed, and alſo that ſuch felon or felons was or were taken by the perſon or perſons claiming the ſaid reward; and in caſe any diſpute ſhall happen to ariſe between the perſons ſo apprehending *any* the ſaid felons, touching *their* right and title to the ſaid reward, That then the ſaid judge or juſtices, ſo reſpectively certifying as aforeſaid, ſhall in and by their ſaid certificate direct and appoint the ſaid reward to be paid to and amongſt the parties claiming the ſame, in ſuch ſhares and proportions as to the ſaid judge or juſtices ſhall ſeem juſt and reaſonable; and if it ſhall happen that any ſuch ſheriff or ſheriffs ſhall die or be removed before the expiration of one month after ſuch conviction, and demand made of the ſaid reward (not being paid as aforeſaid) That then the next ſucceeding ſheriff or ſheriffs ſhall pay the ſame within one month after demand, and certificate brought as aforeſaid; and if default of payment of the ſaid ſum or ſums of money ſhall happen to be made by any ſheriff or ſheriffs, ſuch ſheriff or ſheriffs ſo making default ſhall forfeit, to the perſon or perſons to whom ſuch money is due as aforeſaid, double the ſum or ſums of money he or they ought to have paid, to be recovered by him or them, or his or their executors or adminiſtrators, in any of her majeſty's courts of record at *Weſtminſter*, by action of debt, bill, plaint or information, wherein but one imparlance, and no eſſoin, protection or

Apprehenders of buglars or felons, &c. to have 40 l. over and above the rewards by 10 & 11 W. 3. c. 23.

Payable by ſheriff of county.

Juſtices in caſe of diſpute to direct in their certificate how reward ſhall be paid.

wager of law ſhall be allowed, with treble coſts of ſuit by him or them expended in the recovery of the ſame.

Watchman or other kill'd in purſuit of houſe breaker, his executor, &c. entitled to the 40 l. by 3 Geo. 1. c. 15. ſect. 4.

Sect. 2. " And be it further enacted, That in caſe any watchman, or any other perſon or perſons ſhall happen to be killed by any ſuch burglar or houſe-breaker, endeavouring to apprehend, or in making purſuit after him or them, that then the executors or adminiſtrators, or ſuch perſon or perſons to whom the right of adminiſtration of the perſonal eſtate of ſuch perſon ſo killed ſhall belong, upon certificate delivered under the hands and ſeals of the judge or juſtices of aſſize of the county where the fact was committed, or the two next juſtices of the peace, of ſuch perſon or perſons being ſo killed, which certificate the ſaid *judge* or juſtices, upon ſufficient proof before them made, are immediately required to give without fee or reward, ſhall receive the ſum of forty pounds from the ſheriff or ſheriffs of the county where the ſaid fact was done and committed; and upon failure of payment thereof by the ſaid ſheriff or ſheriffs, double the ſum of forty pounds to be recovered againſt them, with coſts of ſuit, in manner and form as aforeſaid.

Sheriffs may apply to the treaſury without charging this money in their accounts.

Sheriffs to deduct monies ſo paid on their accounts,

Sect. 3. " And it is hereby further enacted, That all ſheriffs, their executors and adminiſtrators, upon producing ſuch reſpective certificates, and the receipts for the money paid by them, in purſuance of this act, ſhall be allowed, and are hereby impowered to deduct, upon their accounts, all monies, other than double the ſum or ſums of money, and treble coſts of ſuit, which they ſhall diſburſe as aforeſaid; and that if, upon account of any ſheriff or ſheriffs, there ſhall not be money ſufficient in the hands of ſuch ſheriff or ſheriffs to reimburſe him or them ſuch monies paid by him or them by virtue of this act, that then the ſheriff or ſheriffs having ſo paid the monies ſhall have the ſame repaid by the lord treaſurer, or commiſſioners of her majeſty's treaſury for the time being, out of the revenue of the crown, upon certificate from the clerk of the pipe to that effect.

and be repaid by lord treaſurer.

Felon, &c. diſcovering two or more felons, ſhall on conviction be entitled to reward,

Sect. 4. " And be it further enacted, That if any perſon or perſons, being out of priſon, ſhall from and after the ſaid tenth day of *May* commit any burglary or felony as aforeſaid, and afterwards diſcover two or more perſons who already have, or hereafter ſhall commit any ſuch burglaries or felonies, ſo as two or more of the perſons diſcovered ſhall be convicted of ſuch burglary or felony, any ſuch diſcoverer ſhall himſelf have the like reward and allowance of forty pounds hereby promiſed to be paid to the perſon or perſons who ſhall apprehend and convict houſe-breakers, and all other advantages given to ſuch taker and proſecutor, and ſhall alſo be himſelf entitled to the gracious pardon of her majeſty, her heirs and ſucceſſors, for all burglaries, robberies and felonies (except murder and treaſon) by him committed at any time or times before ſuch diſcovery made, which pardon ſhall be likewiſe a good bar to any appeal brought for ſuch burglary, robbery or felony.

and be pardoned.

Buyers or receivers of ſtoln goods, &c. made acceſſaries, &c.

Sect. 5. " And foraſmuch as the ſaid felons are much encouraged to commit ſuch burglaries and felonies, becauſe a great number of perſons make it a trade to receive and buy of the ſaid felons the goods ſo by them

them feloniouſly taken, and alſo do make it their buſineſs to harbour and conceal the ſaid offenders after the ſaid facts, knowing the ſaid felonies and burglaries to have been by them committed: Be it therefore enacted by the authority aforeſaid, That if any perſon or perſons ſhall receive or buy any goods or chattels that ſhall be feloniouſly taken or ſtoln from any other perſon, knowing the ſame to be ſtoln, or ſhall receive, harbour or conceal any burglars, felons or thieves, knowing them to be ſo, ſhall be taken and received as acceſſary or acceſſaries to the ſaid felony or felonies; and being of either of the ſaid offences legally convicted, by the teſtimony of one or more credible witneſſes, ſhall ſuffer and incur the pains of death as a felon convict.

Sect. 6. "Provided always, That if any ſuch principal felon cannot be taken, ſo as to be proſecuted and convicted for any ſuch offence, yet nevertheleſs it ſhall and may be lawful to proſecute and puniſh every ſuch perſon and perſons buying or receiving any goods ſtoln, by any ſuch principal felon, knowing the ſame to be ſtoln, as for a miſdemeanor, to be puniſhed by fine and impriſonment, or other ſuch corporal puniſhment as the court ſhall think fit to inflict, although the principal felon be not before convict of the ſaid felony, which ſhall exempt the offender from being puniſhed as acceſſary, if ſuch principal felon ſhall be afterwards taken and convicted.

If principal felon cannot be taken, acceſſary to be try'd as for a miſdemeanor.

Sect. 7. "Provided always, and be it enacted by the authority aforeſaid, That the judge, juſtice or juſtices (before whom ſuch felons and houſe-breakers ſhall be convicted, as aforeſaid) ſhall determine and ſettle the right, rights and ſhares of ſuch reſpective perſons, who by virtue of this act ſhall be entitled to the certificate herein directed to be given, and ſhall alſo (being thereunto required) make out and deliver, or cauſe to be made out and delivered the ſaid certificate without fee or reward to ſuch perſon or perſons entituled thereunto, before the end of ſuch aſſizes or ſeſſions wherein ſuch conviction, as aforeſaid, ſhall be had."

Judges, &c. to ſettle the right and ſhares of perſons to the certificate, &c.

Stat. 3 *Geo.* 1. *c.* 15. [*A. D.* 1716. *intituled*] "An act for the better regulating the office of ſheriffs, and for aſcertaining their fees, and the fees for ſuing out their patents, and paſſing their accounts."

Sect. 4. "And whereas by virtue of an act made in the fourth and fifth years of the reign of their late majeſties king *William* and queen *Mary*, for encouraging the apprehending of highway-men; and of one other act made in the ſixth and ſeventh years of his ſaid late majeſty king *William* the third, to prevent counterfeiting and clipping the coin of this kingdom; and of one other act made in the fifth year of her late majeſty queen *Anne*, for encouraging the apprehending of houſe breakers, the reſpective ſheriffs of *England* and *Wales* are obliged to pay the ſeveral rewards of forty pounds, as in thoſe acts is directed, upon the convictions of highwaymen, clippers, coiners, or houſe-breakers, to ſuch perſon or perſons who ſhall bring to ſuch ſheriff a certificate under the hand of the judge or juſtices before whom ſuch offenders were convicted, directing payment

4 & 5 W. & M. c. 8. 6 & 7 W. 3. c. 17. 5 Annæ, c. 31.

payment thereof, under the penalty of forfeiting to the party entitled thereunto double the ſum ſo certified, with treble coſts of ſuit; which ſaid reward of forty pounds being ſo paid, as aforeſaid, is by the ſaid ſeveral acts ordered to be allowed to ſuch ſheriff upon his account; and if there ſhould not be remaining in the hands of ſuch ſheriff monies ſufficient for that purpoſe, that in ſuch caſe the ſurpluſage occaſioned thereby ſhould be repaid to ſuch ſheriff by the lord high treaſurer, or the commiſſioners of the treaſury for the time being, out of the revenue of the crown, upon certificate thereof from the clerk of the pipe, or by the auditor of *Wales*, as by the ſaid reſpective acts may more at large appear: And whereas ſince the making of the ſaid acts it hath been found, that many ſheriffs have been put under great difficulties and inconveniencies thereby, not only by reaſon of paying down great ſums of money for the rewards aforeſaid, before the publick revenue writ out to them in proceſs could be levied or collected by them, but alſo by reaſon that ſuch ſheriff cannot have a certificate of his ſurpluſage from the clerk of the pipe, or the auditor of *Wales*, until he hath fully finiſhed his account, and be diſmiſſed the court; by which means the ſheriff is kept a long time out of his money ſo diſburſed for the rewards aforeſaid: Be it therefore enacted by the authority aforeſaid, That no ſheriff ſhall be obliged to bring or charge in his accounts any ſum or ſums of money to be paid for the rewards above-mentioned, or any of them, from and after the ninth day of *July* one thouſand ſeven hundred and ſeventeen, but ſhall and may immediately apply for the ſame to the lord high treaſurer of *Great Britain*, or commiſſioners of the treaſury for the time being, who, upon inſpecting a due certificate of the conviction of ſuch offender or offenders, for which ſuch reward ſhall be ordered to be paid, as aforeſaid, by virtue of the ſaid acts, or any of them, together with the receipts or acquittances of the parties entitled to receive the ſame, ſhall forthwith repay to ſuch ſheriff or ſheriffs reſpectively, all ſuch monies ſo diſburſed and paid, as aforeſaid, without any fee or reward whatſoever; any thing in the aforeſaid acts, or any of them, contained to the contrary thereof in any wiſe notwithſtanding."

After 9 July 1717, ſheriff not obliged to charge money for apprehending highway men, or for preventing the counterfeiting, *&c.* of the coin, or for apprehending houſe-breakers; but may on the judge's certificate of the conviction and receipt of the party entitled to the reward, apply to the lord treaſurer, *&c.*

who ſhall pay him the ſums diſburſed, without fee.

Stat. 6 *Geo.* 1. *c.* 23. [*A. D.* 1719. *intituled*] "An act for the further preventing robbery, burglary, and other felonies, and for the more effectual tranſportation of felons."

Sect. 10. "And be it further declared by the authority aforeſaid, That the reward of forty pounds for the apprehending and convicting any perſon or perſons for burglary, ſhall be paid without any deduction, as aforeſaid, for every offender who ſhall be apprehended and convicted for the ſaid crime."

Stat.

Stat. 25 *Geo.* 2. *c.* 36. [*A. D.* 1752.] *Made, among other purpoſes,* " for the better preventing thefts and robberies."

Sect. 11. " And whereas many perſons are deterred from proſecuting perſons guilty of felony, upon account of the expence attending ſuch proſecutions, which is another great cauſe and encouragement of thefts and robberies; In order therefore to encourage the bringing offenders to juſtice, Be it enacted by the authority aforeſaid, That it ſhall and may be in the power of the court, before whom any perſon has been tried and convicted of any grand or petit larceny, or other felony, at the prayer of the proſecutor, and on conſideration of his circumſtances, to order the treaſurer of the county in which the offence ſhall have been committed, to pay unto ſuch proſecutor ſuch ſum of money as to the ſaid court ſhall ſeem reaſonable, not exceeding the expences which it ſhall appear to the court the proſecutor was put unto in carrying on ſuch proſecution, making him a reaſonable allowance for his time and trouble therein; which order the clerk of aſſize, or clerk of the peace reſpectively, is hereby directed and required forthwith to make out and to deliver unto ſuch proſecutor, upon being paid for the ſame the ſum of one ſhilling, and no more; and the treaſurer of the county is hereby authorized and required, upon ſight of ſuch order, forthwith to pay to ſuch proſecutor, or other perſon authorized to receive the ſame, ſuch ſum of money as aforeſaid, and ſhall be allowed the ſame in his accounts."

In proſecutions for felony; court may make orders for payment of the proſecutor's expences;

Clerk's fee for ſuch order.

County treaſurer to pay the order.

Stat. 27 *Geo.* 2. *c.* 3. [*A. D.* 1754.] *Made, among other purpoſes,* " for allowing the charges of poor perſons bound to give evidence againſt felons."

Sect. 3. " And whereas the expence, as well as loſs of time in attending courts of juſtice, is a diſcouragement to the poorer ſort to appear as witneſſes againſt offenders, who thereby eſcape the publick juſtice, and the puniſhment due to their crimes; Be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-fourth day of *June,* when any poor perſon ſhall appear on recognizance in any court to give evidence againſt another accuſed of any grand or petit larceny, or other felony, it ſhall and may be in the power of the court, at the prayer and on the oath of ſuch perſon, and on conſideration of his circumſtances, in open court to order the treaſurer of the county or place in which the offence ſhall have been committed, to pay unto ſuch perſon ſuch ſum of money, as to the ſaid court ſhall ſeem reaſonable for his time, trouble and expence; which order the proper officer of ſuch court is hereby directed and required to make out, and to deliver unto ſuch perſon, upon being paid for the ſame the ſum of ſix pence, and no more; and ſuch treaſurer is hereby authorized and required, upon delivery of ſuch order, forthwith to pay to ſuch perſon, or other perſon authorized to receive the ſame, ſuch ſum of money as aforeſaid, and ſhall be allowed the ſame in his accounts.

The charges of attendance to be allowed by the court to poor perſons bound to give evidence againſt felons.

6 *d.* to be paid to the officer for making out the order.

Sect.

In Middlesex the overseers of the poor of the parish where the offender was taken, to pay all such charges.

Sect. 4. "Provided always, and it is hereby declared and enacted by the authority aforesaid, That nothing in this act contained shall extend to impower such court, or any justice or justices of the peace, to make warrants or orders on the treasurer of the county of *Middlesex* for the payment of the expences of the constable or other officer in conveying any person to gaol, or for the payment of any person for his time, trouble and expence, who shall appear on his recognizance to give evidence as aforesaid; but that within the said county of *Middlesex* the expences of the constable or other officer, occasioned by his conveying of any person to gaol by virtue of a warrant from any justice or justices of the peace, shall (after such expences have been examined into upon oath, and allowed by such justice or justices, and for which no fee or reward shall be taken) be paid by the overseer or overseers of the poor of the parish or place where the said person was apprehended, who is and are hereby authorized and required to pay the same; and the sum or sums so paid shall be allowed in his or their accounts."

Certificate of having apprehended, prosecuted and convicted a felon, under 10 & 11 Will. 3 c. 23. sect. 2. (See p 448) is assignable over, once and no more; provided it has not been used before: it exempts from all *parish* and *ward* offices within the parish or ward wherein the felony was committed; but will not serve to exempt the constable of a *manor*, which comprehends the *whole* town and parish where the felony was committed, and *more* 2 Bur. Rep.

This was a case from *Warwickshire* assizes. The defendant was originally indicted at the quarter-sessions holden at *Warwick* on the 4th of *April* 1758, for refusing to take upon himself the office of constable of and for the *manor* of *Birmingham*, having been duly nominated and elected thereto. And the indictment set forth, that at a court-leet holden on the 18th of *October* 31 *G.* 2. in and for the *manor* of *Birmingham*, the defendant, according to the custom of the same manor, was duly nominated and elected by the jury, One of the constables of the said *manor* of *Birmingham* for the year then next ensuing: he then being an inhabitant and resident of and within the said manor, and being a fit person so to be nominated and elected to the said office. That the defendant had notice, *&c.* That the steward certified his appointment to a justice of peace; by whom he was summoned to appear on, *&c.* at, *&c.* to take the oath of office as constable nominated and elected of and for the said *manor* of *Birmingham* as aforesaid. That although he personally appeared according to the summons, and was then and there required by the said justice to take the said oath of office of constable of and for the said *manor* of *Birmingham* according to the nomination and election aforesaid, he unlawfully, wilfully and contumaciously did neglect and refuse to take it, and to be duly sworn into the said office, and to take it upon him. There was a second count in the indictment, alledging that he was personally present in court at the leet, and being required by the steward to be sworn and take the office upon him, neglected and refused, *&c.* This indictment being removed hither by *certiorari*, the defendant pleaded "Not guilty:" and the cause was tried at *Warwick* summer-assizes in *August* 1759, before lord chief baron *Parker*. It appeared upon the evidence, that the facts laid in the indictment were true; and that the defendant was a fit person to be nominated and elected as aforesaid; and liable to serve the said office of constable, UNLESS discharged or *exempt* therefrom by reason of the *certificate* and assignment thereof herein after mentioned: also, that the usage at *Birmingham* has been, "annually at the court-leet there, to elect two constables

conſtables for the manor of *Birmingham generally*, and one conſtable for the hamlet of *Deritend* (a diſtinct vill within the ſaid manor) particularly." That the *manor* of *Birmingham* extends itſelf into and *comprehends the whole town and pariſh of Birmingham*, and *alſo* the ſaid hamlet of *Deritend*. That the conſtables ſo elected for the ſaid *manor* of *Birmingham generally*, have juriſdiction and authority, as conſtables, *not only* throughout the ſaid *town and pariſh of Birmingham*, but ALSO *within and throughout the ſaid hamlet of* Deritend. That the conſtable of *Deritend* is elected out of the inhabitants of *Deritend* only: and the conſtable ſo elected for *Deritend* particularly, and the ſaid conſtable ſo elected for the ſaid *manor* of *Birmingham* have ſeverally *equal* and *concurrent* juriſdiction within the ſaid hamlet of *Deritend*. That the defendant had a CERTIFICATE according to the ſtatute of 10 & 11 *W.* 3. *c.* 23. diſcharging one *Plowden Jennett* from all pariſh offices within the pariſh of *Birmingham*; and an aſſignment thereof ſigned and executed on the ſeveral and reſpective days of the dates thereof reſpectively. And the ſame was duly inrolled according to the ſtatute; and had not been before aſſigned.

1182. Trin. 1 Geo. 3. Rex v. Darbyſhire.

Upon this caſe, the queſtion reſerved for the opinion of his majeſty's court of *King's Bench*, is, Whether the ſaid *John Darbyſhire*, upon the circumſtances of this caſe, is, *notwithſtanding the certificate*, guilty of the indictment, or Not guilty. Mr. ſerjeant *Hewitt* for the king, argued that he is *not* exempted from ſerving *this* office herein deſcribed. The diſcharge is (by the act) from all "PARISH *and* WARD *offices*," within the pariſh or ward wherein the felony was committed. But the limits of *this* man's office extend BEYOND *the pariſh of Birmingham:* therefore this is not a PARISH office. And there is no ſuch diviſion in this place, as a *ward:* therefore no WARD officer. But a CONSTABLE is *not a pariſh officer* at all. It was a common-law office, before pariſhes exiſted. Conſtables were, by common law, conſervators of the peace. "The office is as ancient as turns or leets;" 4 *Inſt.* 265. Therefore *more* ancient than *pariſhes*. A pariſh is not a *common-law diviſion*; but an *eccleſiaſtical* one: and ſo it was aſſerted in *Freeman's Rep.* 228. in the caſe of *Adeſon* v. Sir *John Otway*, by Mr. juſtice *Atkins*. And in *Mich.* 10 *W.* 3. an appointment of a conſtable was quaſhed, becauſe it was not alledged in the order, "that he was an inhabitant of the *liberty*," but only "of the *pariſh*." *Caſes Temp. W.* 3. 256. *Anonymous*. Here, this man is appointed conſtable in and for the MANOR of *Birmingham*. The office of conſtable is always annexed to a *vill*, *not* to a *pariſh*. But the *felony*, in this caſe, was committed in the *pariſh of Birmingham*, not in the vill of *Deritend*.

Mr. *Caldecott*, for the defendant.——He is *at leaſt* a PARISH-*officer*, (whatever more he may be;) becauſe his office *extends throughout* the *whole* pariſh of *Birmingham:* and he is an inhabitant of the pariſh of *Birmingham*. Therefore, though he be *alſo* conſtable of the MANOR which *includes the pariſh*; yet he is certainly a *pariſh* officer, notwithſtanding that greater extent of his juriſdiction or power. This act is to be conſtrued *favourably*. And it has been determined on 3 & 4 *W.* & *M. c.* 11. "That ſerving the office of conſtable for a city at large, (though he was

appointed by the corporation, and exerciſed it throughout the whole city,) gained a ſettlement in the pariſh where he inhabited." 2 *Strange* 1014. *Between the pariſhes of St. Maurice* and *St. Mary Calendar in Wincheſter*. P. 29 G. 2. *B. R. Rex* v. *Davis*, *collector of the rates and duties of the highways of the pariſh of St. Leonard Shoreditch*, who was appointed by the truſtees under the act of parliament, and *not choſen by the pariſh*: yet it was holden to be a *pariſh-office*; and "That this act ought to receive the *moſt liberal* conſtruction." In the liberty of *Weſtminſter*, the conſtables are choſen by the burgeſſes for the liberty of *Weſtminſter*, and act throughout the whole liberty: yet they always *enjoy the benefit* of theſe certificates. This caſe is executing an office *in* the pariſh where the man lives; and is certainly within the intention of the legiſlature. For the act of parliament directs the judge to certify in what pariſh or place the felony was committed.

Mr. ſerjeant *Hewitt*, in reply——The reward is only a diſcharge from *pariſh* and *ward* offices; and from no others. As to 2 *Strange* 1014.—— It depends upon the words of the act of parliament of 9 & 10 *W.* 3. *c.* 11. which only requires executing a *publick annual* office, *within the pariſh*: It does not at all ſpeak of *pariſh-offices*; nor is confined to them, as *this* is. As to the caſe of *Rex* v. *Davis*——The man was choſen by truſtees, under an act of parliament for repairing the *highways* of that pariſh, collector of ſuch highway rates within the pariſh: ſo that that *was* ſtrictly and properly a *pariſh* office. In *Weſtminſter*, I believe, the conſtables are appointed for a particular pariſh, *not* for the liberty in general. The preſent caſe, moſt manifeſtly, is not confined to the pariſh where the felony was committed: which, by the act, it ought to be; for it is clear that the act does not mean to extend it further than *that* limit.

Lord *Mansfield*.—The only queſtion upon this caſe is, "Whether the conſtable of the *manor* of *Birmingham* is a PARISH-*officer* of the pariſh of *Birmingham?* This term "*pariſh-officer*," does not include *every* office exerciſed *in* the pariſh: if it did, it might even take in the office of high-ſheriff of the county. A *pariſh*-officer is *relative to the pariſh*, and confined to the pariſh only. A conſtable of a *pariſh* may be called a pariſh-officer: but this man has a *much larger* juriſdiction than the pariſh *only:* for he has a juriſdiction over the whole manor, which extends much *beyond* the pariſh; and the pariſh is only a PART of that diſtrict over which it is to be exerciſed. And the act does not intend the certificate to be a diſcharge from an office, whereof the functions are to be exerciſed *out of the limits of the pariſh*. This man cannot be eſteemed a *pariſh-officer*, either from the *origin* of his office, or the *nature*, or the *exerciſe* of it.

Mr. juſtice *Deniſon*.——*If* it had been ſtated "that the manor of *Birmingham* and pariſh of *Birmingham* were *co-extenſive*, this certificate might have been a ſufficient diſcharge. But this is ſtated quite otherwiſe, namely, "That the juriſdiction of the conſtables elected for the manor generally, extends *not only* throughout the town and pariſh, but ALSO *within and throughout the hamlet of Deritend*." The act only meant to excuſe the pro-

proprietor of the certificate, from ſerving pariſh and ward offices *within* the pariſh or ward where the felony was committed; and not from offices to be exerciſed *out* of the pariſh or ward. If ſo, this is *not* an office within the words or meaning of the act of parliament, upon this ſtate of the caſe now before us: for this is not an office of conſtable in and for the *pariſh*; but in and for the *manor*, which is *more extenſive* than the pariſh is; and a different ſpecies of diviſion too, one being eccleſiaſtical, the other civil.

Mr. juſtice *Wilmot*.——The act of parliament means theſe certificates to be exemptions from ſuch offices only, the functions of which are *confined within* that ſort of diviſion which is now called a *pariſh*; which is not a civil, but an * eccleſiaſtical diviſion. No ſuch ſpecies of diviſion was known at * common law: the temporal or civil diviſion was into *vills*, not into pariſhes. And this office now under our conſideration, as the caſe is ſtated, could be only a *partial* exerciſe of the functions of this office, *within the pariſh of Birmingham:* for he could only exerciſe within the pariſh of *Birmingham*, the functions of *ſuch part* of the juriſdiction as the *limits of the pariſh extended to*; but *not* thoſe of the *reſt* of his juriſdiction which lay *beyond* the limits of it. Conſequently, the exemption he could pretend to claim under this certificate could be, as this caſe is ſtated, *only partial:* but it would be *abſurd* to conſtrue the act to *exempt* him from ſerving the ſame identical office within the *pariſh*, and yet leave him *liable* to ſerve it in the *vill*. Mr. *Caldecot*'s caſe cited from 2 *Strange* is very ſtrong for the preſent opinion of the court. That caſe was upon the certificate act of 9 & 10 *W.* 3. *c.* 11. The queſtion was "Whether executing the office of conſtable for the city at large gave a certificate-man a ſettlement in the pariſh wherein he inhabited and exerciſed it:" and it was holden "That he did acquire a ſettlement thereby." But it was *not* treated as a *parochial* office; it was enough that it was an *annual* office *exerciſed within* the pariſh; which was ſufficient to bring it within *that* act of parliament, though it was not a *parochial* office. And as to the caſe of *Davis* the collector of the highway-rates of *St. Leonard*'s——It turned ſingly upon an act of parliament peculiar to that pariſh. That of *St. Maurice* in *Wincheſter* was indeed about an office in the *city in general*; and this is an office in the *manor in general:* but the queſtion did not there turn upon its being a *parochial* office, or not; it being ſufficient that it was an *annual* one. *Per cur.* unanimouſly, Let the *poſtea* be delivered to the proſecutor; and let judgment be entered for the King.

* V. Freeman's Rep. 228. *per* Atkins, accord.

Burning.

BURNING, ſays lord *Coke*, is a felony at the common law, committed by any that maliciouſly and voluntarily, in the night or day, burneth the houſe of another. 3 *Inſt.* 66.

Burning] It ſeems to be clearly agreed, that neither a bare intention to burn a houſe, nor even an actual attempt to do it by putting a fire to part of a houſe, will amount to felony, if no part of it be burnt, for the indictment muſt have the words *incendit & combuſſit:* but it is certain, that if any part of the houſe be burnt, the offender is guilty of felony, notwithſtanding the fire afterwards be put out, or go out of itſelf. 1 *Hawk. P. C.* 106.

Maliciouſly and voluntarily] It ſeems clear, that if the fire happened through negligence or miſchance, it cannot make him, who is the unfortunate cauſe of it, guilty of this felony; for the indictment muſt alledge the offence to have been done *voluntariè ex malitiâ præcogitatâ & felonicè.* Yet if one maliciouſly intending only to burn the houſe of *A.* happen thereby to burn the houſe of *B.* it is certain that he may be indicted as having maliciouſly burned the houſe of *B.* for where a felonious deſign againſt one man miſſes its aim, and takes effect upon another, it ſhall have the like conſtruction as if it had been levelled againſt him who ſuffers by it. 1 *Hawk.* 66.

The houſe] It ſeems agreed, that not only a manſion-houſe, and the principal parts thereof, but alſo any other houſe, and the out-buildings, as barns, and ſtables, adjoining thereto; and alſo barns full of corn, whether they be adjoining to any houſe or not, are ſo far ſecured by law, that the malicious burning of them is felony at the common law. 1 *Hawk.* 105.

Of another] It ſeems clearly agreed, that one ſeized in fee, or but poſſeſſed for years, of a houſe ſtanding by itſelf at a diſtance from all others, cannot commit felony in burning the ſame: alſo it ſeems the much ſtronger opinion, that a man ſo ſeized or poſſeſſed of a houſe in a town, who burns his own with an intent to burn his neighbours, but in the event burns his own only, is not guilty of arſon; for by the general tenor of the books ſpeaking of this offence, it ſeems to be ſuppoſed to be done in the houſe of another, and not of the offender; neither ſhall any act, which is only a crime in reſpect of the injury which it does, or may do, to another, be made a felony by reaſon of an intention thereby to commit a felony, if ſuch intention be not executed: however this is certainly an offence highly puniſhable, in regard of the malice thereof, and the great danger to the publick which attends it, and the offender may be ſeverely fined and impriſoned, during the king's pleaſure, and ſet on

the pillory, and bound to his good behaviour during life. 1 *Hawk.* 105, 106.

An infant of about fourteen years of age or under may be guilty of malicious burning of houſes, if by circumſtances it can appear he knew it to be evil. 1 *Hale's Hiſt. P. C.* 569.

Before me, ſays lord *Hale*, at *Norfolk* a boy about the age of fourteen years was arraigned upon two ſeveral indictments for malicious and wilful burning of two ſeveral houſes; the firſt was his own father's; and it appeared, that when he had ſecretly carried fire into the barn and fired it, he falſely charged another with the fact, and upon the boy's accuſation he was impriſoned, till it appeared clearly he was not the offender: this boy was afterwards together with his father and his other children entertained at a neighbour's houſe in charity, and the boy watching opportunity, when none were in the houſe but a child in the cradle, carried fire out of the kitchen into a room of furzes, and ſet fire in it and went out, and thus burnt a ſecond houſe, and the child in the cradle; for both theſe he was queſtioned, and at length confeſſed freely the whole circumſtances of both facts; he was indicted, and upon his arraignment pleaded, and upon his trial craftily inſiſted, that he was under fourteen years of age; but I directed the jury, that it appeared by the circumſtances, that his malice ſupplied his age, for it appeared, that he underſtood the evil of the firſt offence when he did it ſo ſecretly, and yet charged another wrongfully; but if there had been any doubt of the firſt burning, yet he could not but be conuſant, that the ſecond burning was a great crime, when he ſaw another, formerly charged by him with the firſt burning, committed for felony; but yet for my farther ſatisfaction, and in reſpect the boy ſeemed very little, I took farther examination touching his age, and his father being by, freely confeſſed and was content to ſwear, that he was above fourteen and near fifteen years of age, and he was convicted and executed. 1 *Hale's Hiſt. P. C.* 569, 570.

Burning a houſe whereof one is in poſſeſſion by virtue of a leaſe for years is not felony. Cro. Car. 376. Mich. 10 Car. 1. B. R. Holmes's caſe.

William Holmes was indicted in *London*, for that he in *April* 7 *Caroli*, being poſſeſſed of an houſe in *London* in *Throgmorton-ſtreet*, in ſuch a ward for ſix years, remainder to *Joh. S.* for three years, the reverſion to the corporation of *Haberdaſhers* in fee; he *vi et armis*, 3 APRIL. SEPTIMO *Caroli*, the ſaid houſe *felonice*, *voluntarie et malitioſe*, *igne combuſſit*, *ea intentione ad eandem domum manſionalem*, *nec non diverſas alias domus manſionales diverſorum ligeorum domini regis adtunc et ibidem ſcituat. et exiſtent. ad dictam domum manſionalem dicti* WILLIELMI HOLMES *contigue adjacent'*, *adtunc et ibidem felonice*, *voluntarie*, *et malitioſe totaliter comburend' et igne conſumend' contra pacem.* And upon this being arraigned at *Newgate*, he was found guilty: And before judgment this indictment was removed by *certiorari* into this court. And it was argued at the bar by *Grimſton*, that it was not felony. And now this term at the bench, and by *Richardſon*, chief juſtice *Jones*, and *Berkeley*, it was held, that it was not felony to burn an houſe whereof he is in poſſeſſion, by virtue of a leaſe for years: for they ſaid, that burning of houſes is not felony unleſs that they were *ædes alienæ*. And therefore *Briten fol.* 16. *et Bracton fol.* 146. *et* 27 *Aſſ.* 44. mentions, that it is

felony.

felony to burn the houſe of another, and 10 *Ed.* 4. 14. 3 *H.* 7. 10. *et* 10 *H.* 7. 1. *et Cok. lib.* 11. *fol.* 29. *Poulter's caſe*, which ſay, that burning of houſes generally is felony, are to be intended *de ædibus alienis, et non propriis.* And although the indictment be *ea intentione ad comburendum felonice, voluntarie, et malitioſe*, the houſes of divers others *contigue adjacentes*, yet intent only without fact, is not felony. Alſo *Berkeley* and *Jones* held, that it cannot be ſaid to be *vi et armis*, when it is in his own poſſeſſion. Alſo *Jones* ſaid, that he could not be well indicted of felony, becauſe none of their names are mentioned who be the owners of the houſes adjoining. But to that objection *Berkeley* and *Richardſon* agreed not. But I argued that the burning in the indictment mentioned, is felony, becauſe it is *capitale crimen, felleo animo perpetratum*, which is the definition of felony in *Cok. Lit.* 39. Alſo by the rule in *Bracton* 146. *Quod incendium nequiter, et ob inimicitias, capitali pœna puniatur; ſi vero ſit incendium fortuito vel per negligentiam, et non mala conſcientia, non ſic punietur, ſed verſus eum criminaliter agetur.* And it cannot be ſaid to be negligence in another's houſe, wherefore it is to be intended in his own houſe. Alſo the burning is found to be *malitioſe*, ſo it is *mala conſcientia et nequiter factum.* Alſo this burning of his houſe in a ſtreet of the city, adjoining to the houſes of others, is to the endangering of the city, and therefore ought to be conſtrued to be felony; but ſo peradventure is not the burning of his houſe in the fields. And whereas it was ſaid, that the intention cannot make a felony, it was anſwered, that the intention here is coupled with an act of burning, and with the intendment of an act, which is felony, as 5 *H.* 7. 18. 7 *H.* 7. 42. 13 *Ed.* 4. 9. Where a man delivers goods to one, and afterwards he that delivered them, privately ſteals them, to the intent to charge him, *&c.* it is felony. And whereas it was objected, that being his own poſſeſſion, it cannot be ſaid *vi et armis:* I anſwered, that *vi et armis* is well enough, where there is a malefeſance, as it is in an action upon the caſe. *vide Co. lib.* 9. *fol.* 50. Alſo every indictment is *vi et armis et contra pacem*, where an act is done againſt the commonwealth. So it is where a ſervant runs away with goods committed to his truſt above forty ſhillings, although properly it cannot be ſaid to be *vi et armis*, becauſe they were in his cuſtody. And in this caſe the ill conſequence, which might have fallen out by this act, makes the offence the greater; and the books in 10 *Ed.* 4. 14. 3 *H.* 7. 10. 11 *H.* 7. 1. *& Standford* 16. *Co.* 11. 29. *Co.* 4. 20. put the caſe of burning of houſes generally, and not of the burning of other men's houſes. And it is an equal miſchief in a commonwealth, to burn his own in a city or vill, as to burn the houſes of others, for the danger which may enſue. But the other three juſtices reſolved *ut ſupra*, that it was not felony, wherefore he was diſcharged thereof. But becauſe it was an exorbitant offence, and found, they ordered, that he ſhould be fined 500 *l.* to the king, and impriſoned during the king's pleaſure, and ſhould ſtand upon the pillory with a paper upon his head, ſignifying the offence, at *Weſtminſter* and at *Cheapſide*, upon the market day, and in the place where he committed the offence, and ſhould be bound with good ſureties to his good behaviour during life.

At *Ayleſbury*, *Lent* aſſizes 1735, before Mr. juſtice *Deniſon*, *Elizabeth Harris*, a girl of fourteen years of age *and of ſufficient underſtanding for her years*, was indicted for maliciouſly ſetting fire to and burning a dwelling houſe in the poſſeſſion of *Edward Stokes*. And *Anne* the wife of *William Courſe* was indicted as an acceſſary to the felony before the fact. The priſoner *Elizabeth* was the daughter of the priſoner *Anne* by the former huſband, *John Harris*. It appeared in evidence at the trial, that *John Harris* died ſeized of the equity of redemption of his houſe and of another adjoining to it, ſubject to a mortgage term for 20 *l.* And that the equity deſcended to his eldeſt ſon, a child left with other children under the care of their mother the priſoner *Anne*; who was intitled to dower out of theſe houſes, but no dower was ever aſſigned. That *Anne* having the care of her ſon and his eſtate, let theſe houſes to *Edward Stokes* at the rent of 5 *l.* a year, and received the rent for ſome time. But having a large family of children, ſhe was obliged to aſk relief of the pariſh where ſhe lived. That ſhe was denied ſuch relief on account of theſe houſes; the pariſhioners inſiſting that the overſeers of the poor ſhould be let into the receipt of the rent, before ſhe ſhould be intitled to any parochial relief. That thereupon ſhe frequently declared ſhe would ſet the houſing on fire if the pariſh did not relieve her; that ſhe had young children whom the pariſh could not puniſh, though they might puniſh her, and ſhe would order the leaſt child ſhe had who could carry a coal of fire, to burn the houſing down. And many other declarations of the like kind ſhe made, which diſcovered an obſtinate reſolution in her to burn the houſes, rather than ſubmit to the terms the pariſhioners inſiſted on. It appeared farther, that the priſoner *Elizabeth* ſet the houſe on fire by the direction of the priſoner *Anne*, who went from home on purpoſe at the time the fact was committed, and that no other houſe was burnt. The jury found both the priſoners guilty. But a doubt ariſing by reaſon of the intereſt the priſoner *Anne* had in the houſe, Mr. juſtice *Deniſon* thought proper to reſpite judgment, in order to take the opinion of the judges on the caſe. *July* the 2d. 1753. At a meeting of the judges at the chief juſtice's chambers it was unanimouſly agreed, that both the priſoners are guilty of felony. The only doubt was with regard to the intereſt the priſoner *Anne* had in the houſe, and it was grounded on the reaſoning in *Holmes*'s caſe; for had ſhe had ſuch eſtate in the houſe as would have cleared *her* of the charge of felony, the priſoner *Elizabeth*, who acted by her directions, could not have been guilty of felony. But all the judges agreed, that the priſoner *Anne*'s title to dower was not ſuch an intereſt as could bring her within the rule in *Holmes*'s caſe. *Holmes* had the poſſeſſion by legal title, and during the continuance of his leaſe could maintain his poſſeſſion againſt all mankind; and therefore the houſe might in a limited ſenſe be called *his own*. But in the preſent caſe the poſſeſſion was in *Edward Stokes* under a demiſe from *Anne* in behalf of her ſon, and ſubject to a yearly rent which ſhe received. And her title to dower, had *Edward Stokes*'s intereſt been out of the caſe, did not ſo much as give her a right of entry, it being a bare right of action. Mr. juſtice *Deniſon* ſaid that he had no doubt upon him from the beginning. But it being a new

Foſt. Rep. 113. At Lent aſſizes 1753. Caſe of Elizabeth Harris.

caſe,

caſe, and ſome of the bar being doubtful, he thought it adviſeable to take the opinion of the judges. At the next aſſizes judgment of death was pronounced upon both the priſoners, and *Anne* was executed; but *Elizabeth* being young, and acting under her mother's direction, was reprieved, and recommended to mercy on condition of tranſportation. It was ſaid in the debate of this caſe by ſome of the judges, and not denied by any, that had *Anne* been ſeized of the freehold and inheritance of the houſe, and *Stokes* in poſſeſſion under a leaſe, it would have been felony in *Anne* to have burnt it: otherwiſe all tenants and their concerns would be very much at the mercy of their landlords. The principle three of the judges went upon in *Holmes*'s caſe, (for *Croke* did not concur in the judgment) doth ſeem to warrant this opinion. They conſidered the houſe then under conſideration as the property of *Holmes*, *as his own houſe*, by reaſon of the eſtate he had in it under his leaſe. *Croke* did not diſpute the principle, but argued againſt the concluſion the other judges drew from it. And if this be ſo, I do not ſee why it may not with ſtrict legal propriety be ſaid of a reverſioner, who ſhould maliciouſly ſet fire to houſes in the poſſeſſion of his tenants under leaſes from himſelf or his anceſtors, that he *ædes alienas combuſſit*. The judgment in *Holmes*'s caſe, to ſay no more of it, was a very merciful judgment. The houſe might with ſtrict legal propriety have been conſidered as the houſe of the landlord. Both landlord and tenant have a property, one temporary and limited, the other abſolute and perpetual. Like the bailee and the abſolute owner of goods, in the caſe of larceny.

By *Stat.* 3 *Ed.* 1. *c.* 15. Such as be taken for houſe-burning feloniouſly done, are not bailable by juſtices of the peace. See **Bail**.

Stat. 23 *Hen.* 8. *c.* 1. [*A. D.* 1531. *intituled*] "An act concerning convicts in petit treaſon, murder, *&c.*"

Clergy not allowed to any perſon under a ſubdeacon committing petit treaſon.

"Where at a parliament holden at *Weſtminſter* in the third year of king *Edward* the firſt, the ſame king moved the prelates of the realm, and them enjoined upon their faith that they owed to him, that in no wiſe they ſhould deliver thoſe clerks which were indicted for felony, without due purgation, ſo that the king ſhould have no need to put other remedy in that behalf: (2) and that, notwithſtanding after that monition, divers and many clerks convict were accuſtomably delivered, and ſuffered to make their purgation, to the great courage of evil-doers:

Sect. 2. "By occaſion whereof afterward, at another parliament holden at *Weſtminſter* in the fourth year of king *Henry* the fourth, upon the complaint of the commons, the ſame king *Henry* the fourth then advertiſed the prelates of the realm of the premiſſes, intending them to have provided remedy by authority of the ſaid parliament, as appertained to his prerogative royal, for the conſervation of the peace of the crown; (2) At which time the archbiſhop of *Canterbury*, for himſelf and all other biſhops of his province, then openly promiſed to the ſame king *Henry* the fourth, that if any perſon from thenceforth were convict of any treaſon which touched

4 H. 4. c. 3.

The promiſe of the clergy to the king for the ſafe

touched not the king nor his royal majeſty, and ſuch as were notoriouſly known and reputed for thieves, and for ſuch cauſe delivered to any ordinary as a clerk convict, that the ordinary, to whom ſuch perſon or perſons were delivered, ſhould ſafely keep them after the effect of a conſtitution provincial, to be made by the ſaid archbiſhop and biſhops after the effect of the letters of *Simon*, then before that time archbiſhop of *Canterbury*, bearing date the xij. calends of *March* the year of our lord God M.CCC.L. (3) And that no ſuch traitor nor felon ſhould make his purgation againſt the ſaid conſtitution; (4) which conſtitution the ſaid archbiſhop then promiſed to deliver to the ſame king before his next parliament, to the intent that if it ſhould ſeem to the ſame king, that the ſame conſtitution were not ſufficient remedy for the premiſſes, that then the ſaid king might provide ſuch remedy as ſhould appertain in that behalf. (5) Sithen which time, the ſame conſtitution was never notified ne ſhewed by the prelates of this realm, but continually ſithen that time manifeſt thieves and murderers, indicted and found guilty of their miſdeeds by good and ſubſtantial inqueſts, and upon plain and provable evidence before the king's juſtices, and afterward by the uſages of the common laws of the land delivered to the ordinaries as clerks convict, be ſpeedily and haſtily delivered and ſet at large by the miniſters of the ſaid ordinaries, for corruption and lucre; (6) or elſe becauſe the ordinaries, enclaiming ſuch offenders by the liberties of the church, will in no wiſe take the charges in ſafe keeping of them, but little regarding the trial and conviction of the ſaid offenders by the due and plain courſe of the common laws of the land, do ſuffer them to make their purgations by ſuch as nothing know of their miſdeeds; (7) and by ſuch fraud adnul and make void all the good and provable trial that is uſed againſt ſuch offender by the king's laws, to the great ſlander of ſuch as purſue ſuch miſdoers, and to the pernicious example, increaſe and courage of ſuch offenders, if the king's highneſs by his authority royal put not ſpeedy remedy in the premiſſes, as appertaineth."

keeping of notorious offenders convict without purgation.

The ordinary's abuſe in ſuffering notorious felons to make purgation.

Sect. 3. "Be it therefore enacted by the king our ſovereign lord, and the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled and by authority of the ſame, That no perſon nor perſons, which hereafter ſhall happen to be found guilty after the laws of this land for any manner of petit treaſon, or for any wilful murder of malice prepenſed, or for robbing of any churches, chapels, or other holy places, or for robbing of any perſon or perſons in their dwelling houſes, or dwelling place, the owner or dweller in the ſame houſe, his wife, his children or ſervants then being within, and put in fear and dread by the ſame, or for robbing of any perſon or perſons in or about the high-ways, or for wilful burning of any dwelling houſes, or barns, wherein any grain of corns ſhall happen to be, nor any perſon or perſons being found guilty of any abetment, procurement, helping, maintaining, or counſelling of or to any ſuch petit treaſons, murders or felonies, ſhall from henceforth be admitted to the benefit of his or their clergy, but utterly to be excluded thereof, and ſuffer death in ſuch manner and form, as they ſhould have done for any the cauſes or offences aboveſaid, if they were no clerks; ſuch as be within holy

Co. pl. f. 352. clergy taken from ſeveral perſons which do commit divers offences. Extended to counties where the robbery, &c. was not committed. 3 Inſt. 64, 67, 115. 1 E. 6. c. 12. Kelyng 67, 68, 69. Dyer, f. 224. 11 Co. 29. Extended to robberie in booths of tents, &c.

by 5 & 6 E. 6. c. 9. 1 Bulſtr. 112.

holy orders, that is to ſay, of the orders of ſub-deacon, or above, only except."

None within holy orders, convict of murder, &c. ſhall make purgation, unleſs he become bound with ſureties for his good abearing.

Sect. 4. "And be it further enacted by the authority aforeſaid, That every ſuch perſon and perſons within ſuch orders of ſub-deacon, or above, which at any time hereafter be found guilty of any petit treaſon, or of any murder of malice prepenſed, or of any of the felonies above rehearſed, or of an acceſſary to petit treaſon, wilful murder, or to any other the felonies above ſpecified, and admitted to his or their clergy, and delivered to the ordinary for the ſame, ſhall not in any wiſe from henceforth be ſuffered to any purgation, nor be ſet at liberty, but remain and abide in perpetual priſon, under the keeping of the ordinary, to whom he ſhall be committed, and his ſucceſſors, without any manner purgation during the natural life of every ſuch convict, (2) except only ſuch perſon or perſons ſo being within ſuch holy orders, and convict of or for any of the offences aforeſaid, and delivered to the ordinary for the ſame, do find two ſufficient ſureties by recognizance before two of the king's juſtices of his peace, within the ſame ſhire wherein the petit treaſon, murder, or felony, whereof he was convicted, was committed and done, whereof one of them to be of the *quorum*, that ſuch convict ſhall be of good abearing againſt the king our ſovereign lord, his laws and ſubjects; every ſuch convict to be bound in the ſum of xl. li. and every his ſureties in xx. li. (3) and that no ſurety be taken, unleſs ſuch as may diſpend in lands, tenements, or hereditaments yearly, above all charges of eſtate of inheritance of charterhold, xxvi. s. viii. d. or elſe be worth xx. li. in moveable ſubſtance at the time of taking of ſuch recognizance; (4) and that two juſtices of peace, whereof one to be of the *quorum*, by authority aforeſaid, have power and authority to take ſuch recognizance; (5) and that the ſaid juſtices afore whom any ſuch recognizance ſhall be taken, ſhall certify the ſame into the *King's Bench*, within four months next after the taking thereof; upon pain to loſe and forfeit C. s. for every default thereof."

Of what eſtate the ſureties ſhall be.

He that is attaint of felony ſhall not make his purgation.

Sect. 5. "Provided alway, That this act extend not to give any benefit to any ſuch perſon or perſons, which, after their confeſſion, or judgment given againſt them, of or for felony, or murder, or after they be outlawed for any ſuch cauſe, be admitted to their clergy, and delivered to the ordinary for the ſame, but that they and every of them ſhall remain in the cuſtody of the ordinaries without making purgation, upon ſuch peril, and in ſuch manner and form, as it was uſed by the common law before the making of this preſent act; this act or any thing therein contained notwithſtanding."

An ordinary may diſgrade a convict perſon, and ſend him to the King's Bench.

Sect. 6. "Provided always, and it is further enacted, That every ordinary, to whoſe cuſtody any ſuch convict for any of the offences above rehearſed ſhall be committed, may at his liberty diſgrade every ſuch convict after the laws of the church, if he ſee cauſe ſo to do, and ſend the convict ſo diſgraded, in ſure and ſafe keeping, into the *King's Bench*, with a certificate under his ſeal, teſtifying the ſaid diſgrading, (2) upon which the juſtices of the *King's Bench*, having afore them the record upon which the ſaid perſon ſo diſgraded was firſt convict, ſhall give ſuch like judgment

of

of death upon the ſame record, againſt every ſuch perſon ſo convict and diſgraded, as the juſtices afore whom he was convict might have done, if the ſaid perſon ſo diſgraded at the time of his conviction afore them had been no clerk; his admiſſion to his clergy, and committing to the ordinary, ne any other thing, uſe or cuſtom to the contary hereof notwithſtanding; (3) and that every ſuch judgment ſhall be executed accordingly; (4) and that every ordinary, ſo ſending any ſuch convict diſgraded into the *King's Bench*, ſhall be diſcharged againſt the king our ſovereign lord, his heirs and ſucceſſors, of or for any further cuſtody, or keeping of the ſame convict: (5) this act to continue unto the laſt day of the next parliament." 11 Co. f. 303. 25 H. 8. c. 1. 28 H. 8. c. 2. Made perpetual by 32 H. 8. c. 3.

Stat. 25 *Hen.* 8. *c.* 3. [*A. D.* 1533. *intituled*] "For ſuch as ſtand mute, *&c.*"

"Where at your parliament holden at *Weſtminſter*, in the three and twentieth year of your moſt noble reign, among other things it was ordained, eſtabliſhed and enacted, That no perſon or perſons which thereafter ſhould happen to be found guilty, after the laws of this land, for any manner of petit treaſon, or for any wilful murther of malice prepenſed, or for robbing *of* any churches, chapels, or other holy places or for robbing of any perſon or perſons in their dwelling-houſes or dwelling-place, the owner or dweller in the ſame houſe, his wife, his children, or ſervants then being within, and put in fear and dread by the ſame, or for robbing of any perſon or perſons in or near about the high-way, or for wilful burning of any dwelling-houſes or barns, wherein any grain or corn ſhall happen to be; nor any perſon or perſons being found guilty of any abetment, procurement, helping, maintaining, or counſelling of or to any ſuch petit treaſon, murthers or felonies, ſhould from thenceforth be admitted to the benefit of his or their clergy, but utterly be excluded thereof, and ſuffer death in ſuch manner and form, as they ſhould have done for any the cauſes or offences aforeſaid, if they were no clerks; ſuch as be within holy orders, that is to ſay, of the orders of ſubdeacon, or above, all only except, as more at large appeareth by the ſaid act. (2) And foraſmuch as the ſaid act extendeth only to ſuch perſons as be found guilty after the due courſe of the laws of this land, divers and many great errant robbers, murtherers, burglars, and felons, that do offend and commit divers and many petit treaſons, robberies, burglaries, and felonies contrary to the tenor of the ſaid act, perceiving and clearly underſtanding by the words of the ſame ſtatute and act, that they ſhall not loſe the benefit and advantage of their clergy, unleſs they be found guilty after the due courſe of the law, upon their arraignment of and upon the ſaid felonies, robberies, and other offences before ſaid, ſo by them done and committed, by reaſon whereof, divers and many of the ſame robbers and felons, upon their arraignment of the ſame robberies and felonies, upon their indictments againſt them ſtand mute, and ſometimes challenge peremptorily over the number of twenty, or elſe will not directly anſwer to the ſame indictments whereupon they

1 Anderſ. 114. Clergy not allowed to thoſe who ſtand mute, or who do make peremptory challenge.

Certain defects in the ſtatute of 23 H. 8. c. 1.

they be ſo arraigned, according to the order of the law. (3) And for that theſe ſpecial caſes be not expreſly compriſed and contained within the letter of the ſame ſtatute, it is neceſſary and expedient that the ſame cauſe be clearly and definitively expounded and declared by authority of this preſent parliament. (4) And whereas alſo divers and many felons and robbers, that commit and do divers and many great heinous robberies and burglaries in one ſhire, and convey the ſpoil and robbery into any other ſhire, and there be taken, indicted and arraigned upon felony and felonious ſtealing of the ſame goods in the ſame other ſhire, than there where the ſame robberies or burglaries were done and committed, and not upon the ſame robbery nor burglary, for that it was not done nor committed in the ſame ſhire where they be ſo indicted and arraigned, and by reaſon thereof the ſame miſdemeanours, felons, robbers, and burglars have and enjoy the privilege and advantage of their clergy, to the great hurt and loſs of the king's prerogative, and great boldneſs of ſuch offenders:

Caſes in which the benefit of clergy ſhall not be allowed. Repealed in part by 1 Ed. 6 c. 12 ſ. 10. and revived by 5 & 6 Ed. 6. c. 10. ſ. 4.

Sect. 2. "In conſideration whereof, Be it enacted by the king our ſovereign lord, the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by authority of the ſame, That every perſon and perſons, that is or hereafter ſhall be indicted of petit treaſon, wilful burning of houſes, murther, robbery, or burglary, or other felony, according to the tenor and meaning of the ſame ſtatute, and thereupon arraigned, and do ſtand mute of malice or froward mind, or challenge peremptorily above the number of twenty, or elſe will not or do not anſwer directly to the ſame indictment and felony whereupon he is ſo arraigned, ſhall from henceforth loſe the benefit and privilege of his or their clergy, in like manner and form, as if he had directly pleaded to the ſame petit treaſon, murther, robbery, burglary, or other felony whereupon he is ſo arraigned, Not guilty, and thereupon had been found guilty, after the laws of the land."

Sect. 3. "And by the ſame authority be it further enacted, That if any perſon or perſons hereafter be indicted of felony for ſtealing of any goods or chattels in any county within this realm of *England*, and thereupon arraigned and be found guilty, or ſtand mute of malice, or challenge peremptorily above the number of twenty perſons, as is afore ſaid, or will not upon his ſaid arraignment directly anſwer to the ſame felony, that then the ſame perſon and perſons ſo arraigned and found guilty, or ſtand mute of malice, or challenge peremptorily above the number of twenty perſons, or will not directly anſwer to the law, ſhall loſe and be put from the benefit of their clergy, in like manner and form as they ſhould have been, if they had been indicted and arraigned, and found guilty in the ſame county where the ſame robbery or burglary was done or committed, if it ſhall appear to the juſtices before whom any ſuch felons or robbers be arraigned, by evidence given before them, or by examination, that the ſame felonies, whereupon they be ſo arraigned, had been ſuch robberies or burglaries in the ſame ſhire where ſuch robberies or burglaries were committed or done, by reaſon whereof they ſhould have loſt the benefit of their clergy by force of

A man attainted where the goods were carried which were ſtolen in another county.

28 H. 8. c. 1. made per-

of the ſaid ſtatute, in caſe they had been found guilty thereof in the ſame ſhire where ſuch robberies or burglaries were ſo committed or done." petual by 32 H. 8. c. 3. ſ. 7.

Stat. 1 *Ed.* 6. *c.* 12. [*A. D.* 1547. *intituled*] " An act for the repeal of certain ſtatutes concerning treaſons and felonies."

" Nothing being more godly, more ſure, more to be wiſhed and deſired betwixt a prince, the ſupreme head and ruler, and the ſubjects, whoſe governor and head he is, than on the prince's part, great clemency and indulgency, and rather too much forgiveneſs and remiſſion of his royal power and juſt puniſhment, than exact ſeverity and juſtice to be ſhewed; and on the ſubjects behalf, that they ſhould obey rather for love, and for the neceſſity and love of a king and prince, than for fear of his ſtrait and ſevere laws; (2) yet ſuch times at ſome time, committeth in the commonwealth, that it is neceſſary and expedient for the repreſſing of the inſolency and unrulineſs of men, and for the foreſeeing and providing of remedies againſt rebellion, inſurrection, or ſuch miſchiefs (as God ſometime with us diſpleaſed, for our puniſhment doth inflict and lay upon us, or the devil at God's permiſſion, to aſſay the good and God's elect, doth ſow and ſet among us) the which almighty God with his help, and man's policy, hath always been content and pleaſed to have ſtaid, that ſharper laws, as a harder bridle ſhould be made, to ſtay thoſe men and facts that might elſe be occaſion, cauſe and authors of further inconvenience; (3) the which thing cauſed the prince of moſt famous memory, king *Henry* the eighth, father to our ſaid ſovereign lord the king, and other his highneſs progenitors, with the aſſent of the nobles and commons, at divers parliaments in their ſeveral times holden, to make and enact certain laws and ſtatutes, which might ſeem and appear to men of exterior realms, and many of the king's majeſty's ſubjects, very ſtrait, ſore, extreme and terrible, although they were then, when they were made, not without great conſideration and policy, moved and eſtabliſhed, and for the time, to the avoidance of further inconvenience, very expedient and neceſſary: (4) But as in tempeſt or winter, one courſe and garment is convenient, in calm or warm weather, a more liberal caſe or lighter garment, both may and ought to be followed and uſed; ſo we have ſeen divers ſtrait and ſore laws made in one parliament (the time ſo requiring) in a more calm and quiet reign of another prince, by the like authority and parliament repealed and taken away: (5) The which moſt high clemency and royal example of his majeſty's moſt noble progenitors, the king's highneſs of his tender and goodly nature, moſt given to mercy and love of his ſubjects, willing to follow, and perceiving the hearty and ſincere love that his moſt loving ſubjects, both the lords and commons, do bear unto his highneſs, now in this his majeſty's tender age, willing alſo to gratify the ſame therefore, and minding further to provoke his ſaid ſubjects with indulgence and clemency ſhewed on his highneſs behalf, to more love and kindneſs towards his majeſty (if it may be) and upon truſt that they will not abuſe the ſame, but rather be encouraged thereby more faithfully, and with more diligence

Statutes concerning treaſons, &c. repealed.

Sometimes ſharp, and ſometimes milder laws be made, according to the peoples inclinations.

gence (if it may be) and care for his majeſty, to ſerve his highneſs now in this his tender age, is contented and pleaſed, that the ſeverity of certain laws here following be mitigated and remitted.

All ſtatutes made ſithence the firſt year of H. 8. to make any thing felony, repealed.

Sect. 4. "And be it further ordained and enacted by the authority aforeſaid, That all offences made felony by any act or acts of parliament, ſtatute or ſtatutes made ſithence the twenty-third day of *April* in the firſt year of the reign of the ſaid late king *Henry* the eighth, not being felony before, and alſo all and every the branches and articles mentioned, or in any wiſe declared in any of the ſame ſtatutes concerning the making of any offence or offences to be felony, not being felony before, and all pains and forfeitures concerning the ſame, or any of them, ſhall from henceforth be repealed and utterly void, and of none effect."

Stat. 5 & 6 *Ed.* 6. *c.* 10. *A. D.* 1552. *intituled*] "An act for the avoiding of clergy from divers perſons."

Such as rob in one ſhire, and fly into another, ſhall not have their clergy.
25 H. 8. c. 3.
23 H. 8. c. 1.

"Where in the parliament holden at *Weſtminſter* upon prorogation the fifteenth day of *January* in the twenty-fifth year of the reign of our late ſovereign lord king *Henry* the eighth, it is recited, That at the parliament holden at *Weſtminſter* in the twenty-third year of the reign of the ſaid late king, among other things it was ordained, eſtabliſhed and enacted, That no perſon or perſons, which after that time ſhould happen to be found guilty, after the laws of this land, of any manner of petty treaſon, or for any wilful murder of malice prepenſed, or for robbing of any churches, chapels, or other holy places, or for robbing of any perſon or perſons in their dwelling-houſes or dwelling-place, the owner or dweller in the ſame houſe, his wife, his children or ſervants then being within, and put in fear and dread by the ſame, or for robbing of any perſon or perſons in or near about the highways, or for wilfully burning of any dwelling-houſes or barns wherein any grains or corn ſhall happen to be, nor any perſon or perſons being found guilty of any abetment, procurement, helping, maintaining or concealing of or to any ſuch petty treaſon, murthers or felonies, ſhould from thenceforth be admitted to the benefit of his or their clergy, but ſhould utterly be excluded thereof, and ſuffer death in ſuch manner and form as they ſhould have done for any the cauſes or offences aboveſaid, if they were no clerks; (2) which act extendeth but only where ſuch offender was convicted in ſuch county or place where any ſuch offence was ſo committed and done, and not where he or they did ſuch offence in one county, and were taken with the manner in another county: (3) wherefore it was conſidered, That foraſmuch as divers and many felons and robbers, that commit and do divers and many great heinous robberies and burglaries in one ſhire, and convey the ſpoil and robbery into any other ſhire, and there be taken, indicted and arraigned of felony, of the felonious ſtealing of the ſame goods in the ſame other ſhire than where the ſame robberies or burglaries were done and committed, and not of the ſame robbery nor burglary, for that it was not done or committed in the ſame ſhire, where they be ſo indicted and arraigned, and that by reaſon

thereof ſuch felons, robbers and burglarors had and enjoyed the privilege and advantage of their clergy:

Sect. 2. "For redreſs whereof, it was enacted in the ſaid parliament holden in the ſaid xxv. year of the ſaid late king, That if any perſon or perſons after that time, after ſuch robbery or burglary by him or them done in any one county, ſhould be indicted of felony, for ſtealing of any goods or chattels in any other county within this realm, and thereupon arraigned and found guilty, or ſtand mute of malice, or challenge peremptorily above the number of xx. perſons, or would not upon his or their ſaid arraignment directly anſwer to the ſame felony, That then the ſame perſon and perſons ſo arraigned and found guilty, or ſtanding mute of malice, or challenging peremptorily above the number of twenty perſons, or that would not directly anſwer to the law, ſhould loſe and be put from the benefit of his or their clergy, in like manner and form as they ſhould have been if they had been indicted, arraigned and found guilty in the ſame county where ſuch robbery or burglary, as is aforeſaid, was done or committed, if it ſhould appear to the juſtices before whom any ſuch felons or robbers ſhould be arraigned, by evidence given before them, or by examination, that the ſame felons and burglarors ſhould have been put from their clergy in caſe they had been indicted, arraigned and found guilty in the ſame county where the ſame robberies or burglaries were committed or done, as in the ſame ſtatute made in the ſaid xxv. year, among other things, more plainly appeareth.

Sect. 3. "And where in the parliament holden at *Weſtminſter* the iv. day of *November* in the firſt year of the reign of our ſovereign lord the king that now is, it is ordained and enacted, amongſt other things, That no perſon or perſons that before that time had been, or at any time hereafter ſhould be in due form of the laws attainted or convict of murther of malice prepenſed, or of poiſoning of malice prepenſed, (2) or of breaking of any houſe by day or by night, any perſon being then in the ſame houſe where the ſame breaking had been, or after that time ſhould be committed, being put in fear or dread; or of or for robbing of any perſon or perſons in the highway, or near the highway, or for felonious ſtealing of horſes, geldings or mares; (4) or of felonious taking of any goods out of any pariſh church, or other church or chapel; (5) or being indicted or appealed of any of the ſame offences, and thereupon found guilty by verdict of xii. men, or ſhould confeſs the ſame upon his or their arraignment, or would not anſwer directly according to the laws of this realm, or ſhould ſtand wilfully or of malice mute, (6) ſhould not be admitted to have or enjoy the privilege or benefit of his or their clergy or ſanctuary, but ſhould be put from the ſame.

Wherein the ſtat. made 1 Ed. 6. c. 12. doth take away the force of the ſtat. of 25 H. 8. c. 3.

Sect. 4. "And that in all other caſes of felony, other than ſuch as be before mentioned, all and ſingular perſon and perſons, which after the ſaid firſt day of *March* then next following ſhould be arraigned, or found guilty upon his or their arraignment, or ſhould confeſs the ſame, or ſtand mute in form aforeſaid, or would not anſwer directly in form aboveſaid, ſhould have and enjoy the privilege and benefit of his or their clergy, and the

the liberty and privilege of ſanctuary, in like manner and form as he or they might or ſhould have done before the xxiv. day of *April* in the firſt year of the reign of the ſaid late king *Henry* the eighth, as in the ſaid act made in the ſaid firſt year, among other things, more plainly appeareth: (2) By reaſon of which article and clauſe contained in the ſaid act made in the ſaid firſt year, the ſaid ſtatute made in the ſaid xxv. year of the ſaid late king, which did put ſuch felons and burglarors from their clergy, that do ſuch offence in one county, and after are taken with the goods ſtolen in another county, and there indicted, arraigned and found guilty, was made void; by reaſon whereof, divers and many perſons that ſithen the ſaid firſt year have committed ſuch robberies and burglaries in one county, and after have been taken with the manner in another county, and there indicted, arraigned and found guilty, have had and enjoyed their clergy, which they *could* not have had in caſe the ſaid act, made in the ſaid xxv. year had ſtood in force, to the great bolding and comfort of ſuch offenders: (3) For redreſs whereof from henceforth to be had, be it enacted by the authority of this preſent parliament, That the ſaid act made in the ſaid xxv. year, touching the putting of ſuch offenders from their clergy, and every article, clauſe or ſentence contained in the ſame touching clergy, ſhall from henceforth, touching ſuch offences from henceforth to be committed and done, ſtand, remain and be in full ſtrength and virtue, in ſuch manner and form as it did before the making of the ſaid act made in the ſaid firſt year of the reign of our ſaid ſovereign lord the king that now is; any clauſe, article or ſentence compriſed in the ſaid act made in the ſaid firſt year, to the contrary thereof notwithſtanding."

The ſtat. of 25 H. 8. c. 3 ſhall ſtand in force, notwithſtanding a clauſe comprifed in the ſtat. of 1 Ed. 6. c. 12.

Stat. 4 & 5 *Phil. & Ma. c.* 4. [*A. D.* 1557. *intituled*] "An act that acceſſaries in murder and divers felonies, ſhall not have benefit of clergy."

Acceſſaries in petty treaſon, felony, murder, ſhall not have their clergy. 2 & 3 P. & M. c. 17. Savil 45. Dyer, f. 183, 186. 11 Co. 26.

"For the due puniſhment of ſuch as command, counſel, or hire any perſon or perſons, to commit, perpetrate, or do any petty treaſon, wilful murder, or any of the offences in this preſent act mentioned: (2) Be it enacted by the authority of this preſent parliament, That all and every perſon and perſons, that after the firſt day of *March* next coming ſhall maliciouſly command, hire or counſel any perſon or perſons to commit or do any petty treaſon, wilful murder, or to do any robbery in any dwelling-houſe or houſes, or to commit or do any robbery in or near any highway in this realm of *England*, or in any other the queen's dominions, or to commit or do any robbery in any place within the marches of *England* againſt *Scotland*, or wilfully to burn any dwelling-houſe, or any part thereof, or any barn then having corn or grain in the ſame; that then every ſuch offender or offenders, and every of them being outlawed thereof, or being thereof arraigned and found guilty by the order of the law, or being otherwiſe lawfully attainted or convicted of the ſame offence; or by being arraigned thereof, do ſtand mute of malice or froward mind, or do challenge peremptory above the number

number of twenty perſons, or will not anſwer directly to ſuch offence, ſhall not have the benefit of his or their clergy.

Sect. 2. "Provided always, and be it enacted, That every lord and lords of the parliament, and peer and peers of this realm, having place and voice in parliament, upon every indictment for any of the offences aforeſaid, ſhall be tried by their peers, as hath been accuſtomed by the laws of this realm. Trial of a lord by his peers.

The following are lord Hale's obſervations on the preceding acts of 23 *Hen.* 8. *c.* 1. 25 *Hen.* 8. *c.* 3. 1 *Ed.* 6. *c.* 12. 5 *&* 6 *Ed.* 6. *c.* 10. and 4 *&* 5 *Phil. & Ma. c.* 4.

It ſeems unqueſtionable, that the burning of a dwelling-houſe, or any part thereof, or any out-houſe or part thereof, was a felony at common law, and ſo was alſo the burning of a barn with hay or corn in it, though not parcel of a dwelling-houſe, but ſtanding at a diſtance. *Co. P. C. p.* 67. 11 *H.* 7. 1. *b.* 1 Hale's Hiſt. P. C. 570.

But as to the point of the not allowance of clergy therein, there may be ſome matters to be examined: certain it is, that at this day clergy is not allowable to a party convicted of wilful and malicious burning of a dwelling-houſe, or of a barn with corn; *quod vide* 11 *Co. Rep.* 34. *Poulter*'s caſe, adjudged *per omnes juſtic'*. *Plow. Com.* 475. *Co. P. C. p.* 67. and the conſtant practice hath been to deny clergy to thoſe convict of this crime; *quod vide* in the reſolution of *Poulter*'s caſe.

And the ſtatute of 4 *&* 5 *P. & M. cap.* 4. takes away clergy from all acceſſaries before to the offences of wilful burning any dwelling-houſe, or of any barn then having corn or grain in the ſame; And ſurely they took the law to be, that the principal was by law ouſted of his clergy, or otherwiſe they would not have ouſted the acceſſary of his clergy.

But then the queſtion remains, what it was that ouſted the principal of his clergy.

By the ſtatute of 23 *H.* 8. *cap.* 1. clergy was ouſted from all perſons found guilty of burning of any dwelling-houſe or barn, wherein any grain or corn ſhould happen to be, and from all perſons found guilty of abetting, aiding or counſelling thereof, *viz.* acceſſaries before; except perſons in order of ſubdeacon, or above. 1 Hale's Hiſt. P. C. 571.

The ſtatute of 1 *Ed.* 6. *cap.* 12. as to divers offences therein particularly mentioned, which are for the moſt part alſo included in the ſtatute of 23 *H.* 8. carried the excluſion of clergy farther, *viz.* as to ſtanding mute, or not directly anſwering, but mentions not at all wilful burning of houſes, or barns with grain; And enacted, that in all other caſes of felony, perſons indicted ſhall have their clergy, as they ſhould have had before 1 *H.* 8.

So that by the act of 1 *E.* 6. clergy was reſtored to burning of houſes and barns with corn, notwithſtanding the ſtatute of 23 *H.* 8. or any other ſtatute made ſince the firſt year of *Henry* 8. and if the ouſting of the principal in arſon from his clergy reſted upon the ſtatute of 23 *H.* 8. then the ſtatute of 1 *Ed.* 6. had reſtored him to his clergy.

The ſolution therefore of this matter is upon two accounts.

1. Some have thought that the wilful burning of houſes was not within clergy by the common law, nor by the ſtatute of 25 *E.* 3. *cap.* 4. becauſe it was an hoſtile act, and therefore, as until the ſtatute of 4 *H.* 4. *cap.* 2. *Inſidiatores viarum & depopulatores agrorum* joined with another felony, and ſo found, were ouſted of their clergy, becauſe ſavouring of acts of hoſtility, ſo *incendiatores domorum* were even by the common law ouſted of clergy before the ſtatute of 23 *H.* 8. and ſo are not reſtored to clergy by the general clauſe of the ſtatute of 1 *E.* 6. and this I remember was delivered as the reaſon of the excluſion of clergy from wilful burning by Mr. attorney *Noy*, 8 *Car.* 1. in the *King's Bench*, and ſeemed to be aſſented to by the court.

1 Hale's Hiſt. P. C. 571. But I think, ſays lord *Hale*, this will hardly help the matter, 1. Becauſe though poſſibly clergy might not be allowed at common law to wilful burning, yet the ſtatute of 25 *E.* 3. *cap.* 4. *pro clero* extends clergy to all treaſons and felonies touching other perſons than the king himſelf, and his royal majeſty. 2. Becauſe then as well a burning of a barn with hay, as a barn with corn, would be excluded from clergy, for the one is as hoſtile as the other.

2. Others have thought that the ſtatute of 4 & 5 *P.* & *M.* *cap.* 4. taking away clergy from the acceſſaries before, doth not take away, by neceſſary conſequence, the clergy from the principal, for it were not reaſon to think the acceſſary before ſhould be in a worſe condition, than the principal offender, and therefore virtually and implicatively, and by neceſſary conſequence, it takes away clergy from the principal in all thoſe caſes, where it takes it from the acceſſary before, and beſides, if the principal had his clergy, the acceſſary could not be arraigned; and this I think is true, though this caſe needs not this help.

1 Hale's P. C. 572. But I think, ſays lord *Hale*, and ſo is the book of 11 *Co. Rep.* 34, 35. that the ſtatute of 25 *H.* 8. *cap.* 3. which extends to take away clergy in all thoſe caſes, which were within 23 *H.* 8. *cap.* 1. and particularly recites that of burning houſes and barns with grain, and farther extends that excluſion to ſtanding mute, not directly anſwering, challenging above twenty; I ſay that ſtatute of 25 *H.* 8. was in great part repealed by the ſtatute of 1 *E.* 6 and is entirely revived by the ſtatute of 5 & 6 *E.* 6. *cap.* 10. not only as to the point of ouſting clergy upon examination, but alſo as to the excluſion of clergy in thoſe caſes mentioned in the act of 25 *H.* 8. wherein burning of houſes and barns with corn is expreſsly mentioned, ſo that conſequently this ſtatute of 5 & 6 *E.* 6. reviving the ſtatute of 25 *H.* 8. repeals the generality of that clauſe in 1 *E.* 6. whereby clergy was let in, in all caſes not there enumerated.

1 Hale's P. C. 573. And conſequently the periods of this caſe of clergy in wilful burning ſtanding thus:

1. Before 23 *H.* 8. clergy was allowable therein by force of the ſtatute of 25 *E.* 3. *pro clero.*

2. After 23 *H.* 8. until 25 *H.* 8. clergy was allowable for the acceſſary in all caſes, and for the principal in all caſes, but finding him guilty.

3. after

3. After 25 *H.* 8. until 1 *E.* 6. clergy was taken away from the principal as well where he ſtands mute, not directly anſwers, or challenges above twenty, as where he is found guilty.

But the acceſſaries as well before as after were to have clergy.

4. After 1 *E.* 6. till 5 *&* 6 *E.* 6. when the ſtatute of 25 *H.* 8. was revived, both principal and acceſſaries had their clergy in all caſes of burning.

5. After 5 *&* 6 *E.* 6. till 4 *&* 5 *P. & M. cap.* 4. the principal was excluded in all caſes, wherein he was excluded by the ſtatute of 25 *H.* 8. as well where he ſtood mute, challenged above twenty, did not directly anſwer, as where found guilty.

But the acceſſaries before as well as after had their clergy.

6. By the ſtatute of 4 *&* 5 *P. & M. cap.* 4. until this day acceſſaries before are excluded of clergy in all caſes, but acceſſaries after have their clergy.

But yet there ſtill remains two doubts.

1. Whereas the ſtatute of 4 *&* 5 *P. & M. cap.* 4. extends to ouſt clergy from the acceſſary, as well as if he be attainted as convicted, and conſequently if outlawed, he ſhall not have clergy, becauſe it is an attainder; the ſtatute of 25 *H.* 8. extends only to finding guilty, challenging above twenty, ſtanding mute, or not directly anſwering, and it ſeems in attainder of the principal by outlawry he ſhall have his clergy; therefore *quære*, whether an attainder by outlawry ouſt the principal of clergy upon the ſtatute of 23 or 25 *H.* 8.

2. Whereas the ſtatute 4 *&* 5 *P. & M. cap.* 4. hath no exception of perſons in the order of ſub-deacon; but acceſſaries before are ouſted of their clergy in all caſes by that ſtatute, though in orders. 1 Hale's P. C. 574.

Yet by the ſtatute of 25 *H.* 8. which is relative to the ſtatute of 23 *H.* 8. principals in the order of ſub-deacon, or above, have their clergy in the caſe of arſon; for by the ſtatute of 23 *H.* 8. clergy is ſaved to men in orders, where found guilty; and by the ſtatute of 25 *H.* 8. in caſes of ſtanding mute, *&c.* they are ouſted of their clergy as if found guilty, in which caſe men in orders had their clergy, and ſo the reviving of the ſtatute of 25 *H.* 8. by that of 5 *&* 6 *E.* 6 lets in men in orders to their clergy in caſe of arſon, which ſeems to make this abſurdity, that the principal in arſon ſhall have the benefit of clergy if in orders, but the acceſſaries before, though in orders, are excluded by the general penning of the act of 4 *&* 5 *P. & M.*

And herein there will ariſe a difference as to men in orders in relation to the benefit of clergy, between the caſe of being principal in wilful burning of houſes, and the caſe of being principal in robbery in or near the highway, or robbing in a dwelling-houſe, putting the dweller in fear, or murder of malice prepenſe; for the act of 1 *E.* 6. *cap.* 12. excludeth them from their clergy generally without exception of men in orders, though they were excepted by the ſtatutes of 23 and 25 *H.* 8.

But this ſtatute of 1 *E.* 6. making no mention of burning of houſes, the excluſion of them from clergy, if reſting upon the ſtatute of 25 *H.* 8. revived by 5 & 6 *E.* 6. excepts them.

Stat. 37 *Hen.* 8. *c.* 6. [*A. D.* 1545. *intituled*] "The bill for burning of frames."]

Burning a laden cart or firewood

Sect. 4. "If any perſon ſhall malicioufly, willingly, and unlawfully, burn or cauſe to be burnt, any wain or cart laden with coals, or with any goods or merchandizes, or any heap of wood prepared, cut or felled for making coals, billets, or talwood, he ſhall forfeit treble damages to the party grieved, to be recovered by action of treſpaſs and alſo 10 *l.* as a fine to the king."

Stat. 43 *Eliz. c.* 13. [*A. D.* 1601. *intituled*] "An act for the more peaceable government of the parts of *Cumberland*, *Northumberland*, *Weſtmorland*, and the biſhoprick of *Dureſme*."

Several outragious miſdemeanors committed in Cumberland, &c.

Foraſmuch as now of late years, very many of her majeſty's ſubjects, dwelling and inhabiting within the counties of *Cumberland*, *Northumberland*, *Weſtmorland*, and the biſhoprick of *Dureſme*, have been taken, ſome forth of their own houſes, and ſome in travelling by the highway, or otherwiſe, and carried out of the ſame counties, or to ſome other places within ſome of the ſaid ſeveral counties, as priſoners, and kept barbarouſly and cruelly, until they have been redeemed by great ranſoms: (2) And where now of late time there have been many incurſions, roads, robberies, and burning and ſpoiling of towns, villages and houſes within the ſaid counties, that divers and ſundry of her majeſty's loving ſubjects within the ſaid counties, and the inhabitants of divers towns there, have been forced to pay a certain rate of money, corn, cattle, or other conſideration, commonly there called by the name of *Black-mail*, unto divers and ſundry inhabiting upon or near the borders, being men of name, and friended and allied with divers in thoſe parts, who are commonly known to be great robbers and ſpoil-takers within the ſaid counties, to the end thereby to be by them freed, protected and kept in ſafety from the danger of ſuch as do uſually rob and ſteal in thoſe parts: (3) By reaſon whereof, many of the inhabitants thereabouts being her majeſty's tenants, or other good ſubjects, are much impoveriſhed, and theft and robbery much increaſed, and the maintainers thereof greatly encouraged, and the ſervice of thoſe borders and frontiers much weakened and decayed, and divers towns thereabouts much diſpeopled and laid waſte, and her majeſty's own revenue greatly diminiſhed: (4) Which heinous and outragious miſdemeanors there, cannot ſo well by the ordinary officers of her majeſty in thoſe parts be ſpeedily prevented or ſuppreſſed, without further proviſion of law:

Carrying away or detaining

Sect. 2. "For remedy whereof, Be it enacted by the authority of this preſent parliament, That whoſoever ſhall at any time hereafter, without good and lawful warrant and authority, take any of her majeſty's ſubjects againſt

againſt his or their will or wills, and carry them out of the ſame counties, or to any other place within any of the ſaid counties, or detain, force or impriſon him or them as priſoners, or againſt his or their wills, to ranſom them, or to make a prey or ſpoil of his or their perſon or goods, upon deadly feud, or otherwiſe: (2) Or whoſoever ſhall be privy, conſenting, aiding or aſſiſting unto any ſuch taking, detaining, or carrying away, or procure the taking, detaining, or carrying away of any ſuch perſon or perſons priſoners, as aforeſaid: (3) Or whoſoever ſhall take, receive or carry, to the uſe of himſelf, or wittingly to the uſe of any other, any money, corn, cattle, or other conſideration, commonly called Black-mail, for the protecting or defending of him or them, or his or their lands, tenements, goods or chattels from ſuch thefts, ſpoils and robberies, as is aforeſaid: (4) Or whoſoever ſhall give any ſuch money, corn, cattle or other conſideration, called *Black-mail*, for ſuch protection, as is aforeſaid: (5) Or ſhall wilfully, and of malice burn, or cauſe to be burned, or aid, procure, or conſent to the burning of any barn, or ſtack of corn or grain, within any the ſaid counties or places aforeſaid; (6) and ſhall be of the ſaid ſeveral offences, or of any of them indicted, and lawfully convicted, or ſhall ſtand mute, or ſhall challenge peremptorily above the number of twenty, before the juſtices of aſſizes, juſtices of gaol-delivery, juſtices of *Oyer* and *Terminer*, or juſtices of peace within any of the ſaid counties, at ſome of their general ſeſſions within ſome of the ſaid counties to be holden, ſhall be reputed, adjudged and taken to be as felons; (7) and ſhall ſuffer pains of death, without any benefit of clergy, ſanctuary or abjuration, and ſhall forfeit as in caſe of felony.

Taking any perſon againſt his will.

Aſſenting or aiding to the taking or detaining of any perſon.

Receiving or carrying of Black-mail.

Giving of Black-mail for protection.

Burning of barns or ſtacks of corn.

The aforeſaid offences ſhall be felony, without clergy, &c.

3 Inſt. 66, 67.

Sect. 3. " And where divers and ſundry perſons within the ſaid counties, being indicted and outlawed for murders, robberies, burglaries, or other felonies, do notwithſtanding ordinarily reſort and come to markets, fairs, and other publick aſſemblies and meetings, and do there converſe, traffick and trade with other her majeſty's ſubjects, and are entertained, and have the privilege as men obedient to laws, and yet do never yield themſelves to trial of law, nor are apprehended, whereby the ordinary proceeding of law, and execution of juſtice in thoſe parts are grown into very great contempt:

Sect. 4. " Be it therefore likewiſe further enacted, That every clerk of the peace within every of the ſaid counties ſhall, within the ſpace of two months next after any outlawry within any of the ſaid counties, deliver or cauſe to be delivered by writing under his hand, the names of all and every ſuch as are or ſhall be hereafter outlawed within their ſeveral counties, to all and every the ſheriffs of the ſaid ſeveral counties: (2) And all and every the ſaid ſheriffs ſhall proclaim and publiſh them to be outlawed in their ſeveral county-courts, and in the city of *Carliſle*, the towns of *Penreth* and *Cockermouth* in the county of *Cumberland*, and in the towns of *Appulby* and *Kendal* in the county of *Weſtmorland*, and in the town of *Newcaſtle* upon *Tine*, in the county of the town of *Newcaſtle* upon *Tine*, and in the towns of *Morpeth*, *Alnewick* and *Hexam* in the county of *Northumberland*, and in the city of *Dureſme*, and towns of *Darlington*, *Biſhop Awcland*, and *Bernard-Caſtle* within the biſhoprick of *Dureſme*, and in the town of *Berwick* upon *Tweed*; (3) and that the ſaid

The names of all outlaws ſhall be declared to the ſheriff.

Proclamation of the outlaws.

ſaid ſheriffs having notice, as aforeſaid, ſhall from time to time, once in the month at their county-court, proclaim every of the ſaid perſons ſo outlawed, or hereafter to be outlawed, until they ſhall yield their bodies to priſon: (4) And likewiſe, that the mayors, bailiffs, aldermen, and other chief officers within the ſaid ſeveral cities and towns ſhall proclaim the like at every fair or fairs to be kept within the ſaid cities or towns, and once every ſix weeks at their markets.

The puniſhment for relieving or conferring with an outlaw for felony.

Sect. 5. " And be it alſo enacted, That if any perſon or perſons, inhabiting within any the ſaid ſeveral counties, ſhall wittingly and willingly have conference, talk, or in any ſort ſhall relieve, entertain or confer with any ſuch perſon or perſons ſo outlawed, or hereafter to be outlawed for any ſuch murders, burglaries robberies or other felonies, having knowledge of the ſame outlawries, by reaſon of the ſame proclamation, or otherwiſe, and then ſhall not with convenient ſpeed do his beſt endeavour to take and arreſt any ſuch perſon or perſons ſo outlawed, or to be outlawed, as is aforeſaid, ſhall ſuffer impriſonment by the ſpace of ſix months, without bail or mainpriſe, and be bound with two ſufficient ſureties for his good behaviour for the ſpace of one year after, before he be enlarged of his impriſonment.

The enquiry and puniſhment of the offenders.

Sect. 6. " And be it further enacted, That the juſtices of aſſiſe within any of the ſaid counties, juſtices of gaol-delivery, juſtices of *Oyer* and *Terminer*, or juſtices of peace within any of the ſaid counties, at any of their general ſeſſions, ſhall have power and authority by virtue of this act, to enquire, hear and determine of the offences and defaults of the ſaid ſheriffs, mayors, bailiffs, aldermen and other officers, and of the clerks of the peace within the ſaid counties, and proceed againſt them by information or indictment, and puniſh them by fine, impriſonment, or otherwiſe, as they ſhall think fit.

The authority of the lords wardens ſhall not be impeached.

Sect. 7. " Provided always, That this act, nor any thing therein contained, ſhall not extend to abridge or impeach the juriſdiction or authority of any the lords Wardens of any the marches of *England*, for and anenſt *Scotland*; any thing in this preſent act to the contrary notwithſtanding."

Stat. 22 & 23 *Car.* 2. *c.* 7. [*A. D.* 1670. *Intituled*] " An act to prevent the malicious burning of houſes, ſtacks of corn and hay, and killing or maiming of cattle."

Felony for wilful burning of any ricks of corn, hay, &c. or barns, &c. in the night-time
3 Inſt. 66, 67.
8 H. 6. c. 6.
37 H. 8. c. 6.
3 & 4 Ed. 6. c. 5.
43 El. c. 13.

" Whereas divers lewd and evil diſpoſed perſons intending the ruin and impoveriſhment of their fellow ſubjects, have deviſed, and of late ſecretly in the night-time, and at other times when they think their deeds are not known, frequently practiſed in ſeveral parts of this kingdom, unlawful and wicked courſes in burning of ricks and ſtacks of hay, corn and grain, deſtroying of buildings, trees, and cutting, maiming, wounding and killing of horſes, ſheep, beaſts, and other cattle, in contempt of the laws, and to the inſupportable wrong and damage of many of his majeſty's good ſubjects:

Sect. 2. " For prevention whereof, and diſcovery of the offenders, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and of the commons in this preſent parliament aſſembled, and by the authority of the ſame, That where, in any part of this kingdom, any perſon or perſons, after the firſt day of *March* in the year of our lord one thouſand ſix hundred and ſeventy, ſhall in the night-time maliciouſly, unlawfully, and willingly burn, or cauſe to be burnt or deſtroyed, any ricks or ſtacks of corn, hay, or grain, barns, or other houſes or buildings, or kilns, or ſhall in the night-time maliciouſly, unlawfully and willingly kill or deſtroy any horſes, ſheep, or other cattle, of any perſon or perſons whatſoever; every ſuch offence ſhall be adjudged felony, and the offenders and every of them ſhall ſuffer as in caſe of felony.

Attainder ſhall not work corruption of blood, &c.

Sect. 3. " Provided always, That no attainder for any the offences made felony by virtue of this act, ſhall make or work any corruption of blood, loſs of dower, or diſinheritance of heir or heirs.

The party at liberty to be tranſported for ſeven years.

Sect. 4. " And be it further enacted and declared, That in caſe any perſon or perſons, who ſhall be convict or attainted of any the offences made felony by virtue of this act, as aforeſaid, (to avoid judgment of death, or execution thereupon for ſuch offence) ſhall make his election to be tranſported beyond the ſeas, to any of his majeſty's plantations: That then the juſtices of aſſize, *Oyer* and *Terminer*, gaol-delivery or juſtices of the peace before whom ſuch offender ſhall be convict or attaint by virtue of this act, and every of them reſpectively, ſhall cauſe judgment to be entred againſt every ſuch offender, that he be tranſported beyond the ſeas, to ſome of his majeſty's plantations, in the ſaid judgment to be particularly mentioned and expreſſed, there to remain for the ſpace of ſeven years; and that in purſuance of the ſaid judgment, the ſheriff or ſheriffs of the county or city where ſuch offender ſhall be ſo convict or attainted, ſhall cauſe the ſaid offender to be ſafely conveyed and embarked to be tranſported, as aforeſaid; and if any ſuch offender ſhall return into this kingdom before the expiration of the ſaid ſeven years, he ſhall ſuffer death as a felon, and as if no ſuch election to be tranſported had been made by him.

Felony to return before the ſeven years expired.

Treble damages for maiming of cattle, or throwing down inclofures, &c. in the night-time.

Sect. 5. " And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall in the night-time maliciouſly, unlawfully, and willingly maim, wound, or otherwiſe hurt any horſes, ſheep, or other cattle, whereby the ſame ſhall not be killed or utterly deſtroyed, or ſhall deſtroy any plantations of trees, or throw down any incloſures in manner aforeſaid; That then every ſuch offender or offenders ſhall loſe and forfeit to the party grieved, treble the damage which he or they ſhall thereby ſuſtain; the ſame to be recovered by action of treſpaſs, or upon the caſe, or be taken at the common law.

Three or more juſtices of the peace have liberty to entown

Sect. 6. " And be it enacted by the authority aforeſaid, That upon the complaint and requeſt of the party or parties injured in any ſuch manner, any three or more juſtices of the peace for the county, diviſion, city,

quire of the offence, and punish the offenders.

town corporate, or place where such offence shall be committed, whereof one to be of the quorum, shall and may, and they are thereunto authorized and required by virtue of this act to enquire, as well by the oaths of twelve lawful men or more of the same county, as by examination of witnesses upon oath, or by any lawful ways or means which to them shall seem meet, of and concerning any the offences before incurred, and offenders therein; and in order thereunto, to issue out warrants, as well for the summoning of jurors, as for the apprehending of all such persons, as shall or may be thereof suspected, and to take their examination touching the same; as also to cause all such other persons, as to them shall seem likely to make discovery thereof, to appear before them, and to give information upon oath, of and concerning their knowledge of the premisses, so as no person so to be examined by the said justices of the peace, shall be convicted, or in any wise proceeded against, for or by reason of any offence concerning which he or they shall be so examined as a witness, and shall upon such his examination make a true discovery thereof: (2) And in case any person or persons, who by the said justices be thought likely to make discovery, as aforesaid, shall refuse to appear or to be examined as a witness, being duly summoned by the said justices in pursuance of this act, It shall and may be lawful for the said justices of the peace to commit the party so refusing to the common gaol for the said county, without bail or mainprize, until he shall submit to be examined upon oath, of and concerning his knowledge touching the same offence, or the offenders by whom the same was committed.

A witness refusing to appear, shall be committed to prison.

No person shall be twice punished for this offence. The prosecution must be within six months.

Sect. 7. "Provided that no person, who shall be punished for any offence by virtue of this act, shall be punished for the same offence by virtue of any other act or law whatsoever; nor shall be questioned for the same, unless he be proceeded against within six months after the offence committed.

Stat. 4 & 5 *Will. & M. c.* 23. [*A. D.* 1692.] *made* "for the more easy discovery and conviction of such as shall destroy the game of this kingdom."

Penalty upon persons burning ling, &c. upon heaths.

Sect. 11. "Provided always, and be it enacted, That for the better preserving the red and black game of growse, commonly called *Heath-cocks*, or *Heath-polts*, no person whatsoever, on any mountains, hills, heaths, moors, forests, chases or other wastes, shall presume to burn, between the second day of *February* and twenty-fourth day of *June*, any grig, ling, heath, furz, gos, or fern, upon pain that the offender or offenders shall be committed to the house of correction, for any time not exceeding one month, and not less than ten days, there to be whipt, and kept to hard labour."

Stat. 1 *Ann. St.* 2. *c.* 9. [*A. D.* 1701.] *made, among other purpoſes,* "to prevent the wilful burning and deſtroying of ſhips."

Sect. 4. "And for the effectual preventing the wilful caſting away, burning, or otherwiſe deſtroying, by maſters and mariners, of ſhips under their charge: Be it enacted by the authority aforeſaid, That if any captain, maſter, mariner, or other officer, belonging to any ſhip ſhall, after the ſaid twelfth day of *February* one thouſand ſeven hundred and two, wilfully caſt away, burn, or otherwiſe deſtroy the ſhip unto which he belongeth, or procure the ſame to be done, to the prejudice of the owner or owners thereof, or of any merchant or merchants, that ſhall load goods thereon, he ſhall ſuffer death as a felon.

Captain, maſter, &c. wilfully caſting away or burning, &c. any ſhip, ſhall ſuffer death.

Sect. 5. "And be it further enacted by the authority aforeſaid, That all and every the ſaid offence and offences committed on the high ſeas, or where the admiralty hath juriſdiction, ſhall be inquired, tried, heard, determined and judged, in ſuch ſhires and places in the realm, as ſhall be limited by the queen's commiſſion under the great ſeal of *England*, in ſuch manner and form, as in and by an act, made in the twenty-eighth year of the reign of the late king *Henry* the eighth, is directed and appointed for the trial of pirates; and that all and every perſon and perſons, who, from and after the ſaid twelfth day of *February* one thouſand ſeven hundred and two, ſhall be convict of any of the ſaid offence or offences laſt mentioned, or ſhall ſtand mute, or peremptorily challenge above the number of twenty perſons returned to ſerve of the jury, ſhall ſuffer death without benefit of clergy.

Offence committed on the high ſeas may be tried in any ſhire in England, in ſuch manner as by 28 H. 8. c. 15. is directed.

Perſon convicted thereof to ſuffer death without benefit of clergy.

Stat. 6 *Ann. c.* 31. [*A. D.* 1707.] *Made,* "for the better preventing miſchiefs that may happen by fire."

Sect. 3. "And whereas fires often happen by the negligence and careleſneſs of ſervants, Be it therefore enacted by the authority aforeſaid, That if any menial, or other ſervant or ſervants, through negligence or careleſneſs, ſhall fire or cauſe to be fired any dwelling-houſe, or out-houſe or houſes, ſuch ſervant or ſervants, being thereof lawfully convicted by the oath of one or more credible witneſſes made before two or more of her majeſty's juſtices of the peace, ſhall forfeit and pay the ſum of one hundred pounds unto the church-wardens of ſuch pariſh where ſuch fire ſhall happen, to be diſtributed amongſt the ſufferers by ſuch fire, in ſuch proportions as to the ſaid church-wardens ſhall ſeem juſt; and in caſe of default or refuſal to pay the ſame immediately after ſuch conviction, the ſame being lawfully demanded by the ſaid church-wardens, that then and in ſuch caſe ſuch ſervant or ſervants ſhall, by warrant under the hand of two or more of her majeſty's juſtices of the peace, be committed to ſome workhouſe, or houſe of correction, as the ſaid juſtices ſhall think fit, for the ſpace of eighteen months, there to kept to hard labour.

Servants who through negligence fire any houſe, &c. to forfeit 100*l.* or be ſent to the workhouſe for 18 months.

Stat. 1 *Geo.* 1. *St.* 2. *c.* 48. [*A. D.* 1715. *Intituled*] "An act to encourage the planting of timber-trees, fruit-trees, and other trees, for ornament,

naments ſhelter, or profit; and for the better preſervation of the ſame; and for the preventing the burning of woods."

This act is explained and amended by 6 Geo. 1. c. 16.

Sect. 1. "Whereas the raiſing and planting of timber-trees, fruit-trees and other trees, is of very great profit and advantage to the kingdom of *Great Britain*: And whereas divers lewd and diſorderly perſons, and others, have riotouſly, and ſometimes in a clandeſtine and malicious manner broke down, cut up, or otherwiſe deſtroyed ſuch timber-trees, fruit-trees, and other trees, to the great diſcouragement of the planters and owners thereof, and the parties whoſe trees are ſo deſtroyed are remedileſs, for lack of knowing the parties ſo offending: Therefore for the better encouraging of perſons to raiſe, plant, and preſerve timber-trees, fruit-trees and other trees, in fields, hedge-rows, gardens and walks, and elſewhere, either for ornament, ſhelter or profit, and for the preventing the malicious deſtroying or ſpoiling the ſame, and to give remedy to ſuch perſons for making them ſatisfaction for all damages to be occaſioned by ſuch breaking down, cutting up, ſpoiling, or otherwiſe deſtroying ſuch trees; Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons whatſoever, from and after the twenty-fourth day of *June* in the year of our lord one thouſand ſeven hundred and ſixteen, ſhall maliciouſly break down, cut up, pluck up, throw down, bark, or otherwiſe deſtroy, deface or ſpoil any timber-tree or trees, fruit-tree or trees, or any other tree or trees, the perſon or perſons, body politick or corporate, that is, are, ſhall or may be damaged by the ſame, ſhall receive ſuch ſatisfaction and recompence of and from the inhabitants of the pariſh, town, hamlet, vill or place, where ſuch tree or trees ſhall be ſo maliciouſly broken down, cut up, pluckt up, throw down, barked, deſtroyed, defaced or ſpoiled, and to be viewed, and damages and coſts to be recoverable and recovered againſt ſuch pariſh, town, hamlet, vill or place, by the perſon or perſons, whoſe tree or trees ſhall be ſo maliciouſly broke down, cut up, pluckt up, thrown down, barked, deſtroyed, defaced or ſpoiled, in the ſame manner and form as hedges and dikes overthrown by perſons in the night, in and by an act of parliament made in the thirteenth year of the reign of king *Edward* the firſt, intituled, Lords may approve againſt their neighbours: Uſurpations of commons during the eſtate of particular tenants, are to be levied, and damages yielded: And where ſuch offence or offences ſhall be committed in that prrt of *Great Britain* called *Scotland*, to be recoverable and recovered by way of ſummar action, and in the ſame manner and form as damages in other caſes of riot are to be recovered by the laws there, unleſs the party or parties ſo offending ſhall, by ſuch pariſh, town, hamlet, vill or place, be convicted of ſuch offence within the ſpace of ſix months from the committing ſuch offence or offences; any law or conſtruction to the contrary in any wiſe notwithſtanding.

Timber-trees, &c. maliciouſly broken down, &c. the pariſh, &c. ſhall make good the damage to the owner.

How the damages ſhall be recovered in England. 13 Ed. 1. ſtat. 1. c. 46.

How in Scotland.

Sect.

Sect. 2. " And be it further enacted and declared by the authority aforeſaid, That it ſhall and may be lawful to and for any two or more juſtices of the peace of the county, riding, diviſion, ſtewartry, regality, city, town, borough or corporation, wherein any ſuch offence or offences ſhall be committed, or the juſtices in open ſeſſions, upon complaint to them made by any inhabitant of the aforeſaid pariſh, hamlet, vill or place, or of the owner of ſuch tree or trees, or of any other, to cauſe ſuch offender or offenders to be apprehended for the treſpaſſes and offences aforeſaid, or any of them, and to hear and finally determine and adjudge all and every the offence and offences aforeſaid: And if ſuch juſtices ſhall convict any perſon or perſons of all or any the treſpaſſes or offences aforeſaid, then ſuch juſtices, immediately after ſuch conviction, ſhall commit ſuch offender and offenders to the houſe of correction, there to continue and be kept to hard labour for the ſpace of three months, without bail or mainprize; and where there are no houſes of correction, in any county, riding, diviſion, ſtewartry, regality, city, town or borough, where ſuch offender or offenders ſhall be convicted, the ſaid juſtices ſhall commit ſuch offender or offenders to ſuch priſon as is appointed for other criminals, there to continue for the ſpace of four months; and ſhall alſo order and adjudge that ſuch offender and offenders ſhall be publickly whipt by the maſter of ſuch houſe of correction once every month, during ſuch three months, in ſuch borough or corporation, if the offence be committed therein, and not otherwiſe; or in the market-town where ſuch houſe of correction ſtands, or in the next market-town next adjacent to ſuch houſe of correction, and in the county where ſuch offence ſhall be committed, on the market-day of ſuch town, between the hours of eleven and two of the clock; and in ſuch places where there is no houſe of correction, the ſaid juſtices ſhall order and adjudge that ſuch offender or offenders ſhall be publickly whipt by the hand of the common hangman or executioner once every month, during ſuch four months, on the market-day of any borough or corporation where ſuch offender ſhall be committed, or on the market-day of ſome town, between the hours of eleven and two of the clock.

Two juſtices or quarter-ſeſſions finally to determine the offences.

Offenders convicted to be ſent to the houſe of correction for three months, or to the gaol for 4 months, and to be whipt.

Sect. 3. " And be it further enacted, That before any ſuch offender or offenders ſhall be diſcharged, he, ſhe and they ſhall find ſufficient ſureties for his, her or their good behaviour for the ſpace of two years thence next enſuing; any law, cuſtom, or conſtruction to the contrary notwithſtanding.

And before diſcharged ſhall find ſureties for good behaviour for two years.

Sect. 4. " And whereas divers woods, underwoods and coppices have been heretofore, and lately ſet on fire, or burnt, to the great diſcouragement of planting: Be it therefore enacted and declared by the authority aforeſaid, That if any perſon or perſons ſhall, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and ſixteen, maliciouſly ſet on fire, or burn or cauſe to be burnt, any wood, underwood or coppice, or any part thereof, ſuch malicious ſetting on fire, burning or cauſing to be burnt, ſhall be and is hereby declared and made felony, and the offender and offenders ſhall ſuffer, and be liable to all the

Setting any wood, &c. on fire, felony.

Offenders in Scotland to be puniſhed as wilful fire-raiſers by the act 7 Annæ, c. 21.

penalties and forfeitures, as other felons by the law now are: And where ſuch offences are committed in that part of *Great Britain* called *Scotland*, ſuch offender and offenders ſhall ſuffer and be liable as wilful fire-raiſers, according to an act paſt in the ſeventh year of her late majeſty queen *Anne*, intituled, "An act for improving the union of the two kingdoms;" any thing in this act contained, or in any other law or ſtatute to the contrary in any wiſe notwithſtanding.

Stat. 6 *Geo.* 1. *c.* 15. [*A. D.* 1719. *Intituled*] "An act to explain and amend an act paſſed in the firſt year of his majeſty's reign, [intituled, "An act to encourage the planting of timber-trees, fruit-trees, and other trees, for ornament, ſhelter, or profit, and for the better preſervation of the ſame, and for the preventing the burning of woods,"] and for the better preſervation of the fences of ſuch woods."

Sect. 1. "Whereas divers lewd, lawleſs, turbulent and diſorderly perſons and others, ſome times in an open, riotous, and tumultuous manner, and at other times in a clandeſtine, malicious and private manner, do (without the conſent of the owners) enter the woods, wood-grounds, coppices, plantations, parks and chaſes of divers lords of manors, and other owners and proprietors thereof, and make great havock and deſtruction, by cutting down, breaking, throwing down, barking, plucking up, defacing, ſpoiling, taking or carrying away the wood, or ſprings of wood, poles, woods, tops of trees, fruit-trees, thorns, quickſets and underwoods, there growing or being, and alſo by breaking open, throwing down, levelling or deſtroying the hedges, gates, poſts, ſtiles, railing, fences, ditches, banks, walls or other incloſures of ſuch woods, wood-grounds, parks chaſes or coppices, and the offenders therein, being not diſcovered, paſs with impunity, to the great diſcouragement of all owners, planters, and preſervers of wood, and to the great wrong and injury of ſuch lords of manors and other owners and proprietors of ſuch woods, wood-grounds, parks, chaſes, coppices, plantations, timber-trees, fruit-trees or other trees, thorns or quickſets: And whereas ſome doubts have ariſen, whether the offences committed in the day-time, mentioned in an act paſſed in the firſt year of his majeſty's reign, [intituled, "An act to encourage the planting of timber-trees, fruit-trees and other trees, for ornament, ſhelter, or profit, and for the better preſervation of the ſame, and for the preventing the burning of woods,"] are puniſhable by the ſaid act: And whereas there is no proviſion made in the ſaid act for puniſhing the offences committed by perſons who ſhall break open, throw down, level or deſtroy the hedges, gates, poſts, ſtiles, railing, fences, ditches, banks, walls or other incloſures of ſuch woods, wood-grounds, plantations and coppices: Therefore for the explaining and amending the ſaid act, and for remedying the ſeveral miſchiefs herein before-mentioned, and for the better preſerving of all *ſuch* wood-ſprings or ſprings of wood, poles, quick-woods, plantations, under-woods, woods, coppice-woods, gates, poſts, ſtiles, railing, fences, hedges, walls and other incloſures of woods, from being unlawfully cut, taken, ſpoiled, broken, burnt,

1 Geo. 1. ſtat. 2. c. 48.

burnt, deſtroyed, defaced or carried away; and for the better diſcovering and more effectual puniſhment of ſuch offenders therein, their aiders and abbetors; and for the providing ſatisfaction for the damages the reſpective proprietors thereof ſhall ſuſtain thereby: Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons whatſoever, from and after the twenty-fourth day of *June* which ſhall be in the year of our lord one thouſand ſeven hundred and twenty, ſhall either by day or by night cut, take, deſtroy, break, throw down, bark, pluck up, burn, deface, ſpoil, or carry away any wood-ſprings, or ſprings of wood, trees, poles, wood, tops of trees, under-woods or coppice-woods, thorns or quickſets, without the conſent of the owner or owners of ſuch woods, wood-grounds, parks, chaſes or coppices, plantations, timber-trees, fruit-trees or other trees, thorns or quickſets, or of the perſon chiefly intruſted with the care and cuſtody thereof, or ſhall break open, throw down, level or deſtroy any hedges, gates, poſts, ſtiles, railing, walls, fences, dikes, ditches, banks or other incloſures of ſuch woods, wood-grounds, parks, chaſes or coppices, plantations, timber-trees, fruit-trees or other trees, thorns or quickſets, ſuch lords of manors, owners and proprietors of the ſame, that is, are, ſhall or may be damaged thereby, ſhall have ſuch remedy, and have and receive ſuch ſatisfaction and recompence of and from the inhabitants of the pariſhes, towns, hamlets, villages or places joining on ſuch wood-ſprings, or ſprings of wood, wood-grounds, parks, chaſes or copices, and recover ſuch damages againſt the pariſh, town, hamlet, vill or place, pariſhes, towns, hamlets, villages or places aforeſaid, and in the ſame manner and form as for dikes and hedges overthrown by perſons in the night, or at another ſeaſon when they ſuppoſe not to be eſpied, as in and by an act of parliament made in the thirteenth year of the reign of king *Edward* the firſt, [intituled, *Lords may approve againſt their neighbours uſurpations of commons during the eſtate of particular tenants*,] is ſet forth and provided; unleſs the party or parties ſo offending ſhall, by ſuch pariſh, town, hamlet, vill or place, pariſhes, towns, hamlets, villages or places, be convicted of ſuch offences within the ſpace of ſix months from the committing ſuch offence or offences; any law or conſtruction to the contrary in any wiſe notwithſtanding."

After June 24, 1720. Owners of trees, hedges, &c. cut down, ſpoiled, &c. either by day or by night, ſhall have ſatisfaction from the inhabitants of the place in the ſame manner as for dikes, &c. overthrown in the night, is provided by 13 Ed. 1.

13 Ed. 1. ſtat. 1. c. 46.

Unleſs the offender be convicted in ſix months.

Sect. 2. "And be it further enacted and declared by the authority aforeſaid, That if any perſon or perſons, at any time or times, from and after the ſaid twenty-fourth day of *June*, in a riotous, open, tumultuous, or in a ſecret and clandeſtine manner, forceably or wrongfully and maliciouſly, and without the conſent of the proprietor, wood-reeve, wood-keeper, or perſon chiefly intruſted with the care, over-ſight and cuſtody of ſuch woods, wood-grounds, parks, chaſes, coppices or plantations, ſhall cut down, deſtroy, break, bark, throw down, burn, take, deface, ſpoil or carry away any wood or ſprings of wood, underwood or coppice-wood, or ſhall in ſuch a riotous, forceable, tumultuous, ſecret or clandeſtine manner, as aforeſaid, maliciouſly break open, throw down, level, or deſtroy any

Two juſtices of peace of the place, or the ſeſſions, to hear complaints and finally determine all offences againſt this act.

any hedges, gates, poſts, ſtiles, rails, fences, ditches, banks or incloſures of ſuch woods, wood-grounds, coppices, plantations, timber-trees, fruit-trees or other trees, thorns or quickſets, that then it ſhall and may be lawful to and for any two or more juſtices of the peace of the county, riding, diviſion, city, town, borough or corporation, wherein any ſuch offence or offences ſhall be committed, or for the juſtices in open ſeſſions, upon complaint to them made by any inhabitant of the aforeſaid pariſh, hamlet, vill or place, or of the owner of ſuch tree or trees, woods, wood-grounds, parks, chaſes, coppices or plantations, or of any other, to cauſe ſuch offender or offenders to be apprehended for the treſpaſſes and offences aforeſaid, or any of them, and to hear and finally determine and adjudge all and every the offence and offences aforeſaid: And if ſuch juſtices ſhall convict any perſon or perſons of all or any the treſpaſſes and offences aforeſaid, then ſuch juſtices, immediately after ſuch conviction, ſhall and are hereby required to inflict all and every the ſame penalties and puniſhments in the ſaid act of the firſt year of his majeſty's reign herein before mentioned, as fully and largely, and in the ſame manner, for all and every the crimes and offences herein before expreſſed, although not contained in the ſaid act, as if the ſame were here again repeated and re-enacted.

And if they convict any perſon, ſhall inflict the ſame penalties, &c. as in the act 1 G. 1. ſtat. 2. c. 48.

Sect. 3. "Provided always, and be it enacted by the authority aforeſaid, That in caſe any action or actions, ſuit or ſuits, ſhall at any time hereafter be brought, commenced or proſecuted againſt any perſon or perſons for any cauſe, matter or thing done in purſuance of this act, or the before recited acts, that the defendant or defendants in ſuch ſuit or ſuits ſhall and may plead the general iſſue, and thereupon give the ſpecial matter of his defence in evidence; and in caſe a verdict paſſes therein for ſuch defendant or defendants, or the plaintiff becomes nonſuit, or diſcontinues his action, the defendant or defendants in ſuch caſe ſhall have and recover treble coſts; any law or cuſtom to the contrary thereof in any wiſe notwithſtanding."

Perſons ſued may plead the general iſſue, and ſhall recover treble coſts.

See the act of 9 *Geo.* 1. *c.* 22 *under title* **Black-act.**

Stat. 10 *Geo.* 2. *c.* 32. [*A. D.* 1737.] *made, among other purpoſes,* "for the more effectual puniſhment of perſons malicioufly ſetting on fire any mine, pit or delph of coal, or cannel coal."

Sect. 6. "And be it further enacted by the authority aforeſaid, That from and after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-ſeven, and during the continuance of the before mentioned act of the ninth year of the reign of his late majeſty king *George* the firſt, if any perſon or perſons ſhall wilfully and maliciouſly ſet on fire, or cauſe to be ſet on fire, any mine, pit or delph of coal or cannel coal, every perſon ſo offending, being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony without benefit of clergy."

9 G. 1. c. 2. made perpetual by 31 G. 2. c. 42. Perſons ſetting mines of coal on fire to ſuffer death.

And by the articles of the navy, 22 *Geo.* 2. *c.* 33. every perſon who ſhall unlawfully burn or ſet fire to any magazine, or ſtore of powder, or

ſhip, boat, ketch, hoy, or veſſel or tackle or furniture thereunto belonging, not appertaining to an enemy or rebel, ſhall be puniſhed with death by the ſentence of a court martial."

Stat. 28 *Geo.* 2. *c.* 19. [*A. D.* 1755.] *made, among other purpoſes,* " for the preventing the burning or deſtroying of goſs, furze or ferne, in foreſts or chaſes."

Sect. 3. " Whereas the burning and deſtroying of goſs, furze and fern, in and upon foreſts and chaſes, as it is frequently done by divers diſorderly and diſſolute perſons, doth not only deſtroy the cover neceſſary for the preſervation of the deer and game there, but hath alſo been the occaſion of burning, damaging and deſtroying of great quantities of timber, young ſprings of wood and underwood and fences, within the ſaid foreſts and chaſes, and places thereunto adjacent, to the great damage and prejudice of the owners and proprietors thereof; and the laws now in being are not ſufficient to prevent the ſame: Be it therefore enacted by the authority aforeſaid, That if any perſon or perſons, not having a right or legal licence to do the ſame, ſhall, at any time after the firſt day of *Auguſt* one thouſand ſeven hundred and fifty-five, ſet fire to, burn or deſtroy, or ſhall abet, aid or aſſiſt in, or at the burning or deſtroying of any goſs, furze or fern, growing or being in or upon any foreſt or chaſe, within that part of *Great Britain* called *England*, without the licence or conſent of the owner or proprietor, or the perſon chiefly intruſted with the care, overſight and cuſtody of ſuch foreſt or chace, or ſome part thereof, and being brought before one or more juſtice or juſtices of the peace for the county, riding, diviſion or place, where ſuch foreſt or chaſe ſhall lie, and ſhall be thereof convicted by confeſſion, or upon the oath of one or more credible witneſs or witneſſes (which oath ſuch juſtice or juſtices is and are hereby impowered to adminiſter) or upon the view of ſuch juſtice or juſtices, every ſuch perſon or perſons being ſo convicted, ſhall for every ſuch offence forfeit and pay any ſum not exceeding five pounds, nor leſs than forty ſhillings, one moiety thereof to the informer, and the other moiety to the uſe of the poor of the pariſh where the offence ſhall be committed; which penalty, in caſe the ſame be not forthwith paid, ſhall and may be levied by diſtreſs and ſale of the offender's goods and chattels, by warrant or warrants under the hand and ſeal, or hands and ſeals of ſuch juſtice or juſtices; and in caſe no ſufficient diſtreſs can be found, then it ſhall and may be lawful for ſuch juſtice or juſtices to commit ſuch offender or offenders to the common gaol of the county or place where ſuch offence ſhall be committed, for any time not exceeding three months, nor leſs than one month."

Perſons convicted of ſetting fire to goſs, furze, heath or fern, in chaſes or foreſts.

to forfeit not leſs than 40 s. or more than 5 l.

to be levied by diſtreſs and ſale, &c.

Butchers.

STATUTES *made during the reigns of king Hen.* 3. *king Ed.* 1. *or king Ed.* 2. *but uncertain when or in which of their times.* 1 Vol. of Hawk. *Stat. p.* 181.

Stat. *c.* 7. [*intituled*] "The puniſhment of a butcher ſelling unwholſome fleſh."

A butcher that ſelleth ſwines fleſh meazled, or fleſh dead of the murrain, or that buyeth fleſh of jews, and ſelleth the ſame unto chriſtians, after he ſhall be convict thereof, for the firſt time he ſhall be grievouſly amerced, (2) the ſecond time he ſhall ſuffer judgment of the pillory, (3) and the third time he ſhall be impriſoned and make fine, and the fourth time he ſhall forſwear the town. And in this manner ſhall it be done of all that offend in like caſe.

Stat. 4 *Hen.* 7. *c.* 3. [*A. D.* 1487. *intituled*] "Butchers ſhall kill no beaſts within any walled town, or *Cambridge*."

"Item, it was ſhewed by a petition put to the king our ſaid ſovereign lord, in the ſaid parliament, by his ſubjects and pariſhioners of the pariſh of St. *Faith*'s, and St. *Gregory*'s in *London*, near adjoining unto the cathedral church of St. *Paul*'s, That whereas great concourſe of people, as well of his royal perſon, as of great lords and ſtates, with other his true ſubjects, oftentimes was had unto the ſaid cathedral church, and that moſt part throughout the pariſh aforeſaid, the which oftentimes been greatly annoyed and diſtempered by corrupt airs engendered in the ſaid pariſhes, by occaſion of blood, and other fouler things, by reaſon of the ſlaughter of beaſts, and ſcalding of ſwine, had and done in the butchery of St. *Nichols*'s fleſh-ſhambles, whoſe corruption and foul ordure, by violence of unclean, corrupt and putrified waters, is born down through the ſaid pariſhes, and compaſſeth two parts of the palace, where the king's moſt royal perſon is wont to abide when he cometh to the cathedral church for any act there to be done, to the jeopardous abiding of his moſt noble perſon, and to over-great annoyance of the pariſhioners there, and of other the king's ſubjects and ſtrangers that paſs by the ſame; (2) complaint whereof, at many and divers ſeaſons, alſo by the ſpace of ſixteen years continually, as well by the canons, and petty canons of the ſaid cathedral church, landlords there, as alſo by many other of the king's ſubjects of right honeſt behaviour, hath been made unto divers mayors and aldermen of the city of *London*, and no remedy had ne found; (3) that it may pleaſe our ſaid ſovereign lord, of his abundant grace, to provide for the conſervation as well of his moſt royal perſon, as to ſuccour his poor ſubjects and ſuppliants in this behalf, conſidering that in few noble cties,

cities and towns, or none within chriſtendom, whereas travelling men have laboured, the common ſlaughter-houſe of beaſts ſhould be kept in any ſpecial part within the walls of the ſame, leſt it might ingender ſickneſs, unto the deſtruction of the people: (4) The king our ſovereign lord, in conſideration of the premiſſes, hath by the advice and aſſent of the lords ſpiritual and temporal, and the commons, in the ſaid parliament aſſembled, and by authority of the ſame, ordained and enacted, That no butcher, nor his ſervant, ſlay no manner beaſt within the ſaid houſe called the ſcalding-houſe, or within the wall of *London*; upon pain to forfeit for every ox twelve-pence, and every cow, and every other beaſt eight pence; (5) the one half thereof to the king our ſovereign lord, and the other half to every of the king's lieges that will ſue for the ſame by action of debt, and no protection or eſſoin be allowed to any of the defendants againſt whom any ſuch action ſhall be conceived; and that in the ſame action of debt ſuch proceſs be made, as in other actions of debt ſued at the common law. (6) And over this it is ordained and enacted by the ſaid authority, that the ſaid ordinance, act and law extend, and be obſerved and kept in every city, borough, and town, walled within his realm of *England*, and in the town of *Cambridge* (the towns of *Berwick* and *Carliſle* except and forepriſed.) Provided alway, that this preſent act begin and take effect at the feaſt of the *annunciation* of our *lady* next enſuing, and not afore."

Stat. 2 & 3 *Ed.* 6. *c.* 15. *See this act under title* **Brewers.** 2 & 3 Ed. 6. c. 15.

Stat. 1 *Jac.* 1 *c.* 22. *See this act under title* **Leather.** 1 Jac. 1. c. 22.

Stat. 1 *Car.* 1. *c.* 1. [*A. D.* 1627. *intituled*] "An act for the further reformation of ſundry abuſes committed on the *Lord's day*, commonly called *Sunday*." 1 Car. 1. c. 1.

"Foraſmuch as the *Lord's day*, commonly called *Sunday*, is much broken and prophaned by carriers, waggoners, carters, wain-men, butchers and drovers of cattle, to the great diſhonour of *God*, and reproach of religion; (2) Be it therefore enacted by the king's moſt excellent majeſty, and the lords ſpiritual and temporal, and by the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That no carrier with any horſe or horſes, nor waggon-men with any waggon or waggons, nor carmen with any cart or carts, nor wain-man with any wain or wains, nor drovers with any cattle, ſhall after forty days next after the end of this preſent ſeſſion of parliament, by themſelves, or any other, travel upon the ſaid day; upon pain that every perſon and perſons ſo offending ſhall loſe and forfeit twenty ſhillings for every ſuch offence: (3) or if any butcher by himſelf, or any other for him, by his privity or conſent, ſhall after the end of the ſaid forty days kill or ſell any victual upon the ſaid day, that then every ſuch butcher ſhall forfeit and loſe for every ſuch offence the ſum of ſix ſhillings and eight pence; (4) the ſaid offences, and every of them being done in view of any juſtice of peace, mayor, or other head officer,

A carrier, &c. that travels on the Lord's day, ſhall forfeit 20 s.

Butchers that ſell or kill victual upon that day ſhall forfeit 6 s. 8 d.

officer, of an ycity, or town corporate within their limits reſpectively, or being proved upon oath by two or more witneſſes, or by the confeſſion of the party offending, before any ſuch juſtice, mayor or head officer, within their ſeveral limits reſpectively, wherein ſuch offence ſhall be committed: To which end every ſuch juſtice, mayor or head-officer, ſhall have power by this act to miniſter an oath to ſuch witneſs or witneſſes: (5) All which ſums or penalties ſhall or may be levied by any conſtable, or churchwarden, by warrant from any ſuch juſtice or juſtices of the peace, mayor or other head-officer, as aforeſaid, within their ſeveral limits where ſuch offence ſhall be committed or done, by diſtreſs and ſale of the offender's goods, rendering to the party the overplus, or ſhall be recovered by any perſon or perſons that will ſue for the ſame, by bill, plaint or information, in any of his majeſty's courts of record, in any city or town corporate, before his majeſty's juſtices of the peace in their general ſeſſions of the peace: (6) All which forfeitures ſhall be imployed to and for the uſe of the poor of the pariſhes where the ſaid offences ſhall be committed or done, ſaving only that it ſhall be lawful to and for any ſuch juſtice, mayor or head officer, out of the ſaid forfeitures, to reward any ſuch perſon or perſons that ſhall inform or otherwiſe proſecute any perſon or perſons offending againſt this preſent act, according to their diſcretions, ſo that ſuch reward exceed not the third part of the forfeiture: (7) provided that ſuch bill, plaint or information, ſhall be commenced, ſued and proſecuted in the county, city or town corporate where ſuch offence ſhall be committed and done, and not elſewhere; wherein no eſſoin, protection or wager of law ſhall be allowed to the defendant: (8) provided always, that it ſhall be lawful for any conſtable or curchwarden, that ſhall have any ſuit or action brought againſt them for any diſtreſs by them or any of them to be taken by force of this preſent act, to plead the general iſſue, and to give the ſpecial matter in evidence: (9) provided likewiſe, That no perſon or perſons whatſoever ſhall be impeached by this act, unleſs he be thereof queſtioned within ſix months after the offence committed: (10) provided further, That this act ſhall not in any ſort abridge or take away the authority of the court eccleſiaſtical. (11) This act to continue to the end of the firſt ſeſſion of the next parliament. Enforced by 29 *Car.* 2. *cap.* 7."

After conviction, and by warrant from a juſtice, &c. the conſtables, &c. may levy the ſaid forfeitures to the uſe of the poor; or they may be recovered by ſuit.

Stat. 15 *Car.* 2. *c.* 8. [*A. D.* 1663. *intituled*] "An act to prevent the ſelling of live fat cattle by butchers."

3 & 4 Ed. 6. c. 19. ſect. 3. 22 & 23 Car. 2. c. 19. 25 Car. 2. c. 4. 1 Jac. 2 c. 17. 4 & 5 W. & M. c. 24. 11 & 12 W. 3. c. 13. 5 Annæ, c. 34. 7 Annæ, c. 6.

"Whereas by an act made in the third and fourth years of the reign of king *Edward* the ſixth, it is enacted, That no perſon uſing the craft or myſtery of a butcher, ſhould buy any fat oxen, ſteers, runts, kine, heifers, calves or ſheep, and ſell the ſame again alive, upon pain of forfeiture of the cattle ſo ſold; (2) which law hath not wrought ſuch effectual reformation as was intended, by reaſon of the difficulty in the proof of ſuch buying and ſelling, being for the moſt part at places far diſtant, if not in ſeveral counties, by means whereof the parties ſo offending have eſcaped unpuniſhed:

Sect.

Sect. 2. "Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by authority of the ſame, That no perſon uſing the trade of a butcher, ſhall at any time from and after the feaſt of St. *Michael* the archangel next enſuing, ſell, offer or expoſe to ſale in any market, or elſewhere, either by himſelf, or any ſervant or agent whatſoever, any fat oxen, ſteers, runts, kine, heifers, calves, ſheep or lambs alive; (2) upon pain to forfeit the double value of the cattle ſo ſold, or offered or expoſed to ſale, as aforeſaid; the one moiety of which forfeiture ſhall be to the king's majeſty, his heirs and ſucceſſors; and the other moiety to him or them that will ſue for the ſame in any of his majeſty's courts of record, by bill, plaint, action of debt or information, wherein no eſſoin, protection or wager of law ſhall be allowed."

Penalty upon butchers for ſelling live fat cattle.

Stat. 9 *Ann. c.* 11. *See this act under title* **Leather.**

Butter and Cheeſe.

STATUTE 9 *Hen.* 6. *c.* 8. [*A. D.* 1430. *intituled*] "The weight of a wey of cheeſe."

Item, Whereas it hath been of old times accuſtomed in all the counties of *England*, that all the cheeſes which ought to be ſold by the wey ſhould be weighed by the auncel, and becauſe that at the laſt parliament holden at *Weſtminſter* it was ordained, that the ſaid auncels in reſpect of the great deceit of the ſame, ſhould be deſtroyed, and other weights touching ſhould be in this behalf ordained; and it is ſo, that the poor people of the realm be greatly deceived by the ſaid weights touching, for that they know not how many pounds the wey of cheeſe doth contain by the ſaid weights touching. (2) And therefore to the intent that the ſaid poor people ſhall not be in this behalf deceived, as they have been ſithence the ſaid laſt parliament, it is ordained by authority of this parliament, that the weight of a wey of cheeſe may contain xxxii. cloves, that is to ſay, every clove vii. li. by the ſaid weights touching.

8 H. 6. c. 5.

It ſhould be couching, that is, bowing downwards.

Stat. 3 & 4 *Ed.* 6. *c.* 21. [*A. D.* 1549. *intituled*] "An act concerning the buying and ſelling of butter and cheeſe."

"Be it enacted by the authority of this preſent parliament, That no perſon or perſons, after the feaſt of the Annunciation of our lady next coming, ſhall buy to ſell again any butter or cheeſe, unleſs he or they ſell the ſame again by retail in open ſhop, fair or market, and not in groſs; (2) upon pain of forfeiture of the double value of the ſame butter and cheeſe ſo ſold contrary to the tenor of this preſent act: The one moiety of all which forfeiture to be to our ſovereign lord the king, his heirs

Butter or cheeſe ſhall not be bought to be ſold again, except it be by retail in open ſhop, fair or market.

Lane 19, 59. heirs and ſucceſſors, and the other moiety to him or them that will ſue for the ſame in any of the king's courts of record, wherein no wager of law, eſſoin or protection ſhall be allowed for the defendant or defendants.

Retailing. London, &c. provided for by 21 Ja. 1. c. 22. ſ. 6.

Sect. 2. " Provided always, and be it enacted by the authority aforeſaid, That the ſaid word of retail mentioned in this act, ſhall be expounded, declared and taken, only where a weight of cheeſe, or a barrel of butter, or of leſs quantity, and not above, ſhall be ſold at any time to any perſon or perſons in open ſhop, fair or market, and that to be done without fraud or covin.

Inholders and victuallers.

Sect. 3. Provided always, That this act, or any thing therein contained, ſhall not extend to any innholder or victualler, for ſuch butter or cheeſe as ſhall be ſpent or uttered by retail in any of their houſes; any thing contained in this act to the contrary notwithſtanding. (2) This act to endure to the next parliament. 3 *Car.* 1. *c.* 4. Continued until the end of the firſt ſeſſion of the next parliament, and farther continued by 16 *Ca.* 1. *c.* 4.

12 Car. 2. c. 4.

By *Stat.* 5 & 6 *Ed.* 6. *c.* 14. *ſect.* 3. Whoſoever ſhall ingroſs or get into his hands any butter or cheeſe, to ſell the ſame again, ſhall be deemed an ingroſſer. But by *ſect.* 7. the buying and ſelling again of any butter or cheeſe, by any licenſed badger, lader, kidder or carrier, ſhall not be deemed regrating. *See this act at large under title* **Badgers**, *page* 191. *And ſee* 5 *Eliz. c.* 12. *under the ſame title.*

Stat. 21 *Jac.* 1. *c.* 22. [*A. D.* 1623. *intituled*] " An act for the explanation of the ſtatutes made in the third, fourth, and fifth years of king *Edward* the ſixth, concerning the traders of butter and cheeſe."

The ſtatutes of 3 & 4 Ed. 6. c. 21. and 5 & 6 Ed. 6. c. 14. explained.

" Whereas in a parliament holden at *Weſtminſter* in the third and fourth years of the reign of the moſt excellent prince of happy memory, king *Edward* the Sixth, it was enacted, That no perſon or perſons, after the feaſt of the Annunciation of our lady then next coming, ſhould buy to ſell again, any butter or cheeſe, unleſs he or they ſold the ſame again by retail in open ſhop, fair or market, and not in groſs; upon pain of forfeiture of double the value of the ſame butter and cheeſe ſo ſold contrary to the tenor of the ſaid act;

Sect. 2. " In and by which act it is provided and enacted, That the ſaid word of retail mentioned in the ſaid act ſhall be expounded, declared, and taken only where a wey of cheeſe, or a barrel of butter, or a leſs quantity, and not above, ſhould be ſold at one time to any perſon or perſons in open ſhop, fair or market; and that to be done without fraud or covin:

5 & 6 Ed. 6. c. 14.

Sect. 3. " And whereas alſo by one other act made in a parliament holden at *Weſtminſter*, in the fifth year of the reign of the ſaid late king, it was enacted, (amongſt other things) That whatſoever perſon or perſons ſhould ingroſs or get into his hands any butter or cheeſe within the realm of *England*, to the intent to ſell the ſame again, ſhould be accepted, reputed and taken to be an unlawful ingroſſer, and ſhould loſe and forfeit the value

of

of the said goods: (2) In which act there is no proviso for retailers at all; by occasion whereof the traders for butter and cheese for the city of *London* are continually vexed and molested by common informers, sometimes upon the one statute, and sometimes upon the other, to their great loss and charge:

Sect. 4. "Now for that by daily experience it is found, that the traders of butter and cheese for the city of *London*, which fetch and provide the said butter and cheese out of divers counties, upon their great travel, charge and adventure, for provision of the said city, and of others thereunto resorting, and there sell the same in their shops in open market, not only for the general use and service of the said city, and the countries adjoining, but also for any occasion which may be offered for the better expedition of his majesty's service; as also for victualling of ships which daily are victualled from this port of *London*, which possibly cannot be performed by the small quantities aforesaid, and according to the statute:

Sect. 5. "And whereas the common informers, finding that the letter of the said statute extendeth against such as do sell above the quantity of a wey of cheese, or of a barrel of butter at one time, though it be in open shop, fair or market, and that in the other act no proviso at all is made, as aforesaid, for retailers, have of late years much troubled the traders of butter and cheese within the city of *London*, with many informations, as well upon the one statute as the other, and have gotten several sums of money for composition of them, albeit they then were and are men that have been apprentices, trained up in the said trade, and have no other living or trade of life, to their great hindrance and impoverishment:

Sect. 6. "For remedy whereof, Be it enacted by the authority of this present parliament, That the said acts, or any of them, or any other act, statute, law, ordinance, or other provision whatever heretofore, for or concerning the sale of butter or cheese in open shop, fair or market, or the providing or buying of any butter or cheese, shall not in any wise extend to any person or persons, being cheese-mongers, or tallow-chandlers free of the said city, and having been brought up as apprentices by the space of seven years, trading in butter and cheese, for such butter and cheese, and either of them, as he and they shall utter and sell within *London*, and the liberties thereof, or within the borough of *Southwark*, or the city of *Westminster*, for the victualling of any of the shipping of his majesty, his heirs or successors, or for the ships of any other his majesty's subjects, or to such butter or cheese which he or they shall sell by any quantities at one time, and to one person, not exceeding four wey of cheese, or four barrels of butter, without fraud or covin, so as he or they sell the same in open shop, fair or market; any thing in the said acts and statutes, or any of them, to the contrary notwithstanding. The aforesaid acts shall not extend to London, Westminster or Southwark.

Sect. 7. "Provided nevertheless, and be it enacted by the authority aforesaid, That if the justices of the peace of any of the counties of this realm of *England*, or the dominion of *Wales*, at their quarter-sessions of The justices of peace may restrain the traders in butter and cheese,

any

to buy those commodities in the country.

any of the said counties, shall declare and publish in open sessions, that the traders aforesaid in butter and cheese shall forbear to buy any butter or cheese, for any time within the said county or counties, or within any parts or places of the same, that then, for and during the time of such restraint, the said traders in butter and cheese that shall buy any such butter or cheese, and sell the same again by retail, contrary to any the acts aforesaid, shall not be freed of or from any the penalties of the said acts, but shall be subject to the same, as if this act had never been made.

18 H. 6. c. 3. 2 & 3 P & M. c. 5.

(2) This act to continue unto the end of the first session of the next parliament. 3 *Car.* 1. *c.* 4. Continued until the end of the first session of the next parliament, and further continued by 16 *Car.* 1. *c.* 4. 13 & 14 *Car.* 2. *c.* 26.

Stat. 13 & 14 *Car.* 2. *c.* 26. [*A. D.* 1662. *intituled*] "An act for reforming of the abuses committed in the weight and false packing of butter."

The contents of a kilderkin of butter.

"Forasmuch as butter is one of the principal commodities of the product of this kingdom, and is not only of an universal use and expence at home, but very great quantities thereof are transported beyond the seas: (2) And whereas, by custom time out of mind used, every kilderkin of butter ought to weigh one hundred thirty and two pounds gross at the least; that is to say, one hundred and twelve pounds of neat butter, and

The firkin.

the cask twenty pounds: (3) The firkin of butter ought to weigh sixty and four pounds, *viz.* fifty and six pounds of good and merchantable

The pot.

butter neat, and the cask eight pounds; (4) and the pot of butter ought to weigh twenty pounds, *viz.* fourteen pounds of good and merchantable butter neat, and the pot six pounds: (5) And whereas great complaint hath been made by the traders in butter and cheese, That by the fraudulent dealing and practice of several farmers, owners and packers of butter, and by their irregular manner of weighing with stones, iron wedges, bricks, and other unwarrantable weights, the same quantities of butter are not put up into the respective casks and pots aforesaid, and the kilderkin is commonly made to weigh six and twenty pounds, and sometimes eight and twenty pounds, and the firkin to weigh ten pounds or twelve pounds, and sometimes thirteen or fourteen pounds weight, and the pots are made generally to weigh seven pounds, and some of them eight pounds or nine pounds weight; (6) and much bad and decayed butter is mixed, and packed up into kilderkins, firkins, and other casks and pots, with sound and good butter, and immoderate quantities of salt intermixed, to the spoil of the same, and to the great wrong and abuse of his majesty in the victualling of his navy, of merchants in the victualling of their ships, and of all traders in the said commodity, and of all housholders who buy the same for their expence, and to the great dishonour of the *English* nation, in the parts beyond the seas, and to the bringing of the said commodity into great disrepute abroad, whereby it yields not that price, nor is vented there in such quantities as otherwise it would.

Sect.

Sect. 2. " For remedy whereof, Be it enacted by the king's moſt excellent majeſty, by and the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, That from and after the firſt day of *June*, which ſhall be in the year of our lord one thouſand ſix hundred ſixty and two, every kilderkin of butter do and ſhall contain one hundred and twelve pounds neat, or above, every pound containing ſixteen ounces beſides the tare of the caſk, and not leſs, of good and merchantable butter: (2) Every firkin of butter do and ſhall contain fifty-ſix pounds neat, or above, beſides the weight of the caſk, of good and merchantable butter; (3) and every pot of butter do and ſhall contain fourteen pounds neat, or above, beſides the weight of the pot, of good and merchantable butter: (4) And that no butter which is old or corrupt ſhall be mixed or packed up into any kilderkin, firkin, or other caſk, veſſel or pot whatſoever, with any butter which is new and ſound; nor any whey-butter ſhall be packed or mixed with any butter that is made of cream, but that the ſaid reſpective ſorts of butter ſhall be packed up ſeverally and apart by themſelves, and ſhall not be mixed one with another; and that every caſk or pot of butter ſhall be of one ſort and goodneſs throughout ſuch caſk and pot; (5) and that no butter ſhall be ſalted with any great ſalt, but that all butter ſhall be ſalted and ſaved with ſmall ſalt, nor more ſalt ſhall be intermixed with it than ſhall be needful for its preſervation; (6) upon pain and penalty that every owner, farmer or packer of butter not putting up in each kilderkin, firkin and pot of butter to be ſold, or to be expoſed to ſale reſpectively, ſuch quantities, as aforeſaid, or offending in falſe packing, as aforeſaid, for every ſuch offence ſhall forfeit the value of all the butter ſo falſe packed; (7) and for every offence where any kilderkin, firkin or pot ſhall be found to contain a leſſer quantity of butter than by this act is appointed, ſix times the value of every pound of butter that ſhall be wanting in any ſuch caſk or pot.

A kilderkin of butter ſhall contain 112 lb. beſides the caſk.

The firkin 56 lb.

The pot 14 lb.

No old butter ſhall be mixed with new, nor whey-butter.

The penalty.

Sect. 3. " And to the intent that the benefit intended by this act may be extended with full effect to all perſons who do either cut out butter by retail, or expend it, (2) Be it further enacted by the authority aforeſaid, That every cheeſemonger or other perſon whatſoever, which ſhall ſell to any perſon or perſons any kilderkin or kilderkins, firkin or firkins, pot or pots, or other caſk of butter made after the ſaid firſt day of *June*, which ſhall be in the year of our Lord one thouſand ſix hundred ſixty and two, ſhall deliver in every ſuch kilderkin, firkin, and other caſk and pot reſpectively, the full quantity and due quality appointed by this act, and not leſs; or in default thereof, ſhall be liable to make ſatisfaction to him or them that buy the ſame, for what ſhall be wanting, according to the price for which the ſame was ſold. *Farther provided for by* 4 & 5 *W.* & *M. c.* 7. *ſect.* 2.

Cheeſemongers, and all ſellers of butter by the kilderkin, or, &c. ſhall deliver the full quantity to the retailer. See 8 Geo. 1. c. 27.

Sect. 4. " And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *June*, which ſhall be in the year of our Lord one thouſand ſix hundred ſixty and two, no cheeſemonger or other perſon or perſons whatſoever, ſhall repack for ſale any butter in any kilderkin,

None ſhall repack butter.

The penalty.

derkin, firkin, or other caſk or pot whatſoever; (2) upon pain and penalty, that every cheeſemonger or other perſon whatſoever, which ſhall repack any butter into any kilderkin or kilderkins, firkin or firkins, caſk or caſks, pot or pots, to ſell the ſame again, ſhall for every firkin, caſk or pot ſo packed, forfeit the ſum of double the value of all ſuch butter.

Farmers and other ſellers ſhall ſet their marks of the weight upon good and ſufficient caſks, and their names.

Sect. 5. "And for the better diſcovery of all frauds and abuſes which ſhall be committed againſt this act, Be it further enacted by the authority aforeſaid, That every farmer and other perſon and perſons packing up butter in kilderkins, firkins, or any other caſk whatſoever, for ſale, do from and after the ſaid firſt day of *June*, which ſhall be in the year of our Lord one thouſand ſix hundred ſixty-two, pack up his butter into good and ſufficient caſk, made of ſound, dry, and well-ſeaſoned timber, and ſhall ſet upon every firkin and caſk whatſoever, when the ſame is throughly and fully ſeaſoned in water, a continuing viſible mark of the juſt weight of the empty caſk, and do likewiſe ſet upon every kilderkin, firkin and caſk when the ſame is filled with butter, the firſt letter of his or their chriſtian name, and his or their ſirname at length, with an iron-brand; (2) upon pain and penalty that every farmer, or other perſon or perſons whatſoever offending in not putting on the mark of ſuch weight of kilderkin, firkin or other caſk after ſeaſoning, or not ſetting the firſt letter of his or their chriſtian name, and his or their ſirname at length on every firkin and caſk, as aforeſaid, ſhall for every ſuch offence reſpectively forfeit the ſum of ten ſhillings for every hundred weight of butter, and ſo proportionably for a greater or leſſer quantity that ſhall be in every ſuch caſk.

Potters ſhall ſet the weight of every pot burnt, and their names.

Sect. 6. "And be it further enacted by the authority aforeſaid, That every potter ſhall ſet upon every pot which he ſhall ſell for packing up butter, the juſt weight which ſhall be of every ſuch pot when it is firſt burnt, together with the firſt letter of his or their chriſtian name, and his or their ſirname at length; (2) upon pain and penalty that every potter, which ſhall not ſo do, ſhall forfeit and pay for every pot which he ſhall expoſe to ſale for the uſe aforeſaid, whereupon he ſhall not have firſt ſet the juſt weight, and the firſt letter of his chriſtian name, and his ſirname at length, as aforeſaid, the ſum of one ſhilling; (3) and that no farmer or other perſon whatſoever ſhall expoſe to ſale any butter packed up in any other pot than ſuch as ſhall be marked by the potter, as aforeſaid, upon penalty of two ſhillings for every pot of butter which he ſhall expoſe to ſale as is not ſo marked; (4) all and every of which ſaid offences are to be enquired of, ſued for, heard and determined in the ſeſſions of peace for the county, city, borough, town or liberty, or in the court of record of the city, borough, town or liberty wherein ſuch offence ſhall be committed, by action of debt, indictment, information or preſentment, wherein no eſſoin, protection or wager of law ſhall be allowed to the defendant; (5) and the one half of all ſuch forfeitures ſhall be to the uſe of the poor people inhabiting within the pariſh where ſuch offence ſhall be from time to time committed, to be paid to the churchwardens and overſeers of th

How to be diſpoſed.

poor of and in such parish, and the other half to him or them that will sue for the same, besides his double costs thereby expended. Double costs.

Sect. 7. "Provided, That every suit and information which shall be brought upon this act, shall be commenced within four months after the sale of such butter." Within what time suit must be begun upon this act.

Stat. 32 *Car.* 2. *c.* 2. [*A. D.* 1680. *intituled*] "An act prohibiting the importation of butter from *Ireland*."

Sect. 9. "And whereas the present laws do not sufficiently provide against the importation of butter and cheese out of *Ireland* into this kingdom, but that great quantities thereof are daily imported and sold, to the great loss and prejudice of this kingdom; (2) Be it therefore enacted by the authority aforesaid, That from and after the said second day of *February*, no butter or cheese shall be imported into this kingdom from the kingdom of *Ireland*: (3) And all butter and cheese imported from *Ireland*, or that shall be exposed to sale within this kingdom, shall be subject to the like seizures, and the importers or sellers thereof respectively, to the like penalties as are provided or appointed in any former law against any importer or seller, or importation of any beef, bacon or pork from the kingdom of *Ireland*, or any foreign parts; any thing in this or any former law or statute to the contrary notwithstanding." Want of provision against importation of cheese and butter. No butter or cheese shall be imported. Butter and cheese imported and exposed to sale, subject to former penalties.

Stat. 3 *Will. & Mar. c.* 8. [*A. D.* 1691. *intituled*] "An act for the encouragement of the breeding and feeding of cattle."

"For the encouragement of breeding and fatting of cattle for the common good and welfare of this kingdom, Be it enacted by the king's and queen's most excellent majesties, by and with the advice and consent of the lords spiritual and temporal, and the commons, in this present parliament assembled, and by authority of the same, That from and after the first day of *March* in the year of our Lord one thousand six hundred and ninety-one, and from thence forward, it shall be lawful for all and every person or persons, native or foreign, at any time or times, to ship, lade, carry and transport, or export, from and out of any port, harbour, or place within the kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, into any part of the world in amity with their majesties, all sorts of beef, pork, or hogs-flesh, butter, cheese or candles, free from any custom or imposition whatsoever; the act made in the second year of their present majesties, intituled, *An act for granting to their majesties a subsidy of tunnage and poundage, and other sums of money payable upon merchandizes exported and imported*, or any other law, statute, usage, or other prohibition to the contrary thereof, in any wise notwithstanding." Beef, pork, butter, cheese, &c. may be exported custom free. 2 W. and M. s. 1. c. 4.

Stat. 4 *Will. & Mar. c.* 7. [*A. D.* 1692. *intituled*] "An act to prevent abuſes committed by the traders in butter and cheeſe."

"Foraſmuch as divers counties of this kingdom conſiſt chiefly of dairy farms, and are in great meaſure ſupported by the ſale of butter and cheeſe, the growth and product of the ſame; and by an act of parliament made in the fourteenth year of the reign of his late majeſty king *Charles* the ſecond, intituled, *An act for reforming abuſes in the weighing and falſe packing of butter*, the weight thereof is aſcertained, and the goodneſs of the butter is ſecured, under the pains and penalties therein mentioned: And whereas the cheeſemongers of *London*, their factors or agents (without any authority) have appointed in all or moſt of the ſea-port towns in the ſaid counties a certain officer, called a *Weigher*, who often times, ſeveral weeks after the cheeſe and butter hath been bought and approved by the factors and agents of the ſaid cheeſemongers at the ſeller's houſe, have taken upon them (without any authority) to weigh and ſearch the ſaid butter when the ſame comes to the ſea-ports to be ſhipped, and there pretend that the ſame is faulty, and ſet rates of deduction thereupon, and give notes thereof to the factors, who bought ſuch butter; and when the factors come to pay the ſeller for the ſame, they demand the abatement accordingly, which if the ſeller refuſeth to allow, there are frequent indictments or informations exhibited againſt the ſellers, upon the ſaid act of the fourteenth of the ſaid late king, and great oppreſſions have been and are daily committed, to the great loſs and damage of divers land owners and farmers in the ſaid counties, contrary to the true intent and meaning of the ſaid act: For prevention whereof,

13 & 14 Car. 2. c. 26.

Seller of butter, &c. diſcharged from the penalty of 13 & 14 Car. 2. c. 26. after the buyer hath bought and approved of the commodity.

Sect. 2. "Be it enacted by the king's and queen's moſt excellent majeſties, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That after the factor or buyer hath bought and contracted for the ſaid commodity, and approved the ſame at the ſeller's houſe, or the place where he expoſes the ſame to ſale, by ſearching and weighing the ſame (if he think fit) the ſeller ſhall not after be charged or chargeable with, or liable to any of the penalties in the ſaid recited act of the fourteenth year of the ſaid late king *Charles* the ſecond, mentioned or inflicted, upon any pretence of want of weight, falſe packing, or mouldy butter, or the tare of weight not being ſet upon the caſk, or otherwiſe; but from thenceforth ſhall be and is hereby diſcharged of and from the ſaid act; any other law, ſtatute, or uſage to the contrary thereof in any wiſe notwithſtanding.

Penalty upon ſeller changing, &c. the commodity after ſold.

Sect. 3. And for the preventing any fraud in the ſeller, after the factor or buyer hath bought and contracted for the ſaid butter, and approved of the ſame; Be it further enacted by the authority aforeſaid, That the ſaid factor or buyer ſhall ſet his ſeal or mark upon the ſaid butter, or the caſk in which it is, or his name at length; and in caſe the ſame ſhall afterwards be exchanged or be opened, and the caſk wherein the ſame is put up changed, or any bad and decayed butter ſhall be mixed and packed up with

with ſound and good butter, or any other fraud be committed by the ſeller, and the offender be thereof convicted upon oath made of the ſaid offence before one or more of their majeſties juſtice or juſtices of the peace by one or more witneſs or witneſſes (which oath the ſaid juſtice or juſtices are hereby impowered and required to adminiſter), or upon confeſſion of the offender or offenders before ſuch juſtice or juſtices, the ſaid party or parties ſhall forfeit the ſum of twenty ſhillings for every ſuch firkin and offence, to be levied by diſtreſs and ſale of the offender's goods and chattels; the overplus to be reſtored after all charges of the ſaid diſtreſs defrayed: And every conſtable of the pariſh, or chief conſtable of the hundred, where ſuch offence ſhall be committed, are hereby authorized and required to levy the ſame accordingly by warrant under the hand and ſeal of the ſaid juſtice or juſtices ſo to do.

The weigher of butter and cheeſe ſhall ſhip off all that belongs to the London cheeſemongers.

Sect. 4. " And to the end the trade for butter and cheeſe may not be ingroſſed by particular perſons, but may be free and open to all perſons, and eſpecially to all the cheeſemongers who are free of the city of *London*: Be it further enacted by the authority aforeſaid, That all and every warehouſe-keeper, weigher, ſearcher, or ſhipper of butter and cheeſe, at any port or place in this kingdom, ſhall receive, into his or their poſſeſſion or warehouſe, all butter and cheeſe that ſhall be brought to him or them for any of the cheeſemongers free of the city of *London*, or other perſon making the ſaid commodities, and ſhall take due care thereof until the ſame can be ſhipped, and ſhall ſhip the ſaid butter and cheeſe ſucceſſively, as it ſhall come to his or their hands reſpectively (without undue preferring one man's goods before another's) on the next ſhip, or hoy or veſſel, that ſhall come to ſuch port or place to lade butter or cheeſe for *London* (except the owners of the ſaid goods ſhall give orders to the contrary), and ſhall receive for his and their reſpective care and pains therein, of the owners of the ſaid goods, the ſum of two ſhillings and ſix-pence for every load, and no more, and ſo proportionably: And if any ſuch perſon or perſons, or his or their ſervant or ſervants, ſhall refuſe or neglect to receive ſuch goods, or to take due care thereof, or ſhall not ſhip the ſaid goods as they come to his or their hands ſucceſſively as aforeſaid, that every ſuch offender and offenders, being thereof convict in manner as aforeſaid, ſhall forfeit for every firkin of butter ten ſhillings, and for every weigh of cheeſe five ſhillings, to be levied in manner as aforeſaid.

Fee to the weigher.

Penalty upon weighers offending.

Weigher, &c. ſhall keep a book of the receiving and ſhipping the butter, &c.

Sect. 5. " And for the prevention of frauds and undue practices herein, be it further enacted by the authority aforeſaid, That all and every warehouſe-keeper, weigher, ſearcher, or ſhipper of butter and cheeſe, in any ſuch port or place, ſhall, from and after the firſt day of *April* one thouſand ſix hundred ninety and three, keep a book, wherein he and they ſhall duly and fairly enter all butter and cheeſe that ſhall be brought to him or them, as the ſame comes to his or their reſpective hands; in which entry ſhall be inſerted the time when ſuch goods were received, and the quantity of ſuch goods, and the name of the owner of the ſame; and ſhall make the like entries when the ſaid goods are ſhipped or put on board, of the time

when the same were shipped on board, and the master's name, and the vessel's name in which the same are shipped or put on board, and to whom the same are consigned; which book so kept shall be free and open for all persons to see and search at all times, without paying any thing for such search; and if such warehouse-keeper, weigher, searcher, or shipper of butter and cheese, shall not keep such book as aforesaid, or shall refuse, neglect, or omit to make such entries therein as aforesaid, or shall make any undue entries therein (by undue preferring one man's goods before another), or shall refuse in the day time to produce such book to be searched as aforesaid; that every such offender or offenders, being thereof convict in manner as aforesaid, shall forfeit for every firkin of butter two shillings and sixpence, and for every weigh of cheese two shillings and six pence, and for every other the aforesaid offence the sum of two shillings and six pence, to be levied in manner as aforesaid: And in case such offender or offenders shall not have goods and chattels sufficient for the levying the said penalty, that then it shall and may be lawful for the justice or justices, before whom such conviction shall be made, to commit such offender and offenders to the gaol without bail or mainprize, there to remain until such penalties shall be paid and satisfied."

Penalty upon conviction before a justice.

Sect. 6. "And be it further enacted by the authority aforesaid, that if any master of any ship, hoy or vessel coming to such port or place to lade butter and cheese, or his or their servant or servants, shall refuse to take and receive on board his and their respective vessels any such butter and cheese, as shall be tendred to be shipped by such warehouse-keeper, weigher, searcher, or shipper of butter and cheese, before the same be sufficiently laden, that then every such offender and offenders, being thereof convict in manner as aforesaid, shall forfeit for every firkin of butter so refused five shillings, and for every weigh of cheese so refused two shillings and six pence, to be levied in manner as aforesaid."

Penalty upon master of ship refusing to take in butter, &c.

Sect. 7. "Provided, That one half of all penalties and forfeitures within this act shall be to the use of the poor inhabiting within the parish where such offence shall be from time to time committed, to be paid to the churchwardens and overseers of the poor of and in such parish, and the other half to the informer, to be distributed by the said justice or justices before whom the offender or offenders shall be convicted."

Penalties divided betwixt informer and poor.

Sect. 8. "Provided always, that this act nor any thing therein contained shall extend to exclude any cheesemonger or cheesemongers, free of the city of *London*, from sending his and their own proper vessels for his and their own proper and respective goods; but that it shall and may be lawful to and for such person and persons to send his and their own proper vessels, or such other vessels as he or they shall hire and send from *London* to freight by charter-party for his and their own respective proper goods, and to and for the warehouse-keeper at such ports, where such vessels shall be sent, to ship the aforesaid goods on board, and to and for such masters of such vessels, and their servants, to receive the same, as he, they, or any of them, could or might have done before the making of this act."

Cheesemongers &c. may make use of their own vessels.

Sect.

Sect. 9. "Provided that nothing in this act contained shall extend or be construed to extend to any warehouse which now is, or hereafter shall be, within the counties of *Chester* or *Lancaster*, or within the county of the city of *Chester*, nor to any vessel or boat at any time belonging to, or that shall come into, any the ports or havens of any the said counties." Warehouses, &c. in Chester and Lancaster saved.

Sect. 10. "Provided always, That if any person or persons shall think him or themselves aggrieved by the determination of any justice of the peace, who shall at any time act in pursuance of the powers to him given by this act, it shall and may be lawful to and for such person or persons to appeal to the next general quarter-sessions of the peace to be held for the county, riding, city or town corporate, where the said offence shall be committed, the determination of which justices shall be final and conclusive to all parties; the person so appealing first giving to the party accused a bond of the penalty of twenty pounds, with one or more sufficient sureties to the liking of the said justice of peace, from whom the said appeal shall be so made, to pay such costs to the said party accused, as the said court of quarter-sessions shall allow, in case the appellant be not relieved upon his said appeal; the said costs so to be paid within one month afore the hearing and determining the said appeal." Appeal lies from justice to sessions, security being given for costs.

Stat. 8 *Geo.* 1. *c.* 27. [*A. D.* 1721. *Intituled*] "An act for the better preventing abuses committed in weighing and packing of butter in the city of *York*."

Sect. 1. "Forasmuch as butter is one of the chief commodities of the product of several parts of the county of *York*, and county of the same city, and great quantities thereof are brought into the city of *York*, from thence to be transported beyond the seas, and otherwise disposed of: And whereas there hath, time out of mind, been within the said city a free market for butter, which for many years last past hath been kept in *Micklegate* in the said city: And whereas the bringing of butter to the said market, where the same was searched and weighed, hath been found to be the most effectual means of preventing the false weighing and packing of butter, and did formerly gain a great reputation both at home and abroad, to butter brought to the said market; but of late years several farmers of dairies, owners, and other traders in butter, the better to conceal the false weighing and packing of their butter, to be by them disposed of, have neglected to bring the same to the said market to be searched and weighed, by means whereof not only the traders in the said commodity at home, but foreigners also, have been greatly deceived in the weight, goodness, and soundness thereof, and thereby the said commodity yields not that price, nor is sold in such quantities, as otherwise it would be: For remedy whereof, and for the better encouraging the said butter-trade, and (in order thereunto) for the better preventing the frauds

and

and abuſes in the weighing and packing of butter; may it pleaſe your moſt excellent majeſty (at the humble requeſt of the mayor and commonalty of the ſaid city) That it may be enacted, and be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by authority of the ſame, That, from and after the five and twentieth day of *March* one thouſand ſeven hundred and twenty-two, *Micklegate* market aforeſaid, or any other part or place of or in the ſaid city (which the mayor and commonalty of the ſaid city ſhall from time to time, judge moſt commodious and convenient, and for that purpoſe appoint) ſhall be every day in the week, (except *Sundays*) a free and open market for butter, and that it ſhall and may be lawful for any perſon or perſons to buy or ſell any butter in the ſaid market, without any diſturbance; and that, from and after the ſaid five and twentieth day of *March* one thouſand ſeven hundred and twenty-two, all butter brought to the ſaid city of *York* in firkins, half-firkins, tubs or other caſks, or in pots or other veſſels, to be ſold, or to be exported or waterborn from the ſaid city, or from any part of the river of *Ouſe*, as far as the river of *Wharfe*, ſhall be brought to the ſaid market to be viewed, ſearched, weighed, and ſealed with the ſeal of the ſaid market, which the proper officer for the time being is hereby required to do; and that it ſhall and may be lawful to and for the ſaid mayor and commonalty, and their ſucceſſors, or their proper officer for the time being appointed, from time to time, and at all times after the ſaid five and twentieth day of *March* one thouſand ſeven hundred and twenty-two, to aſk, demand, receive and take, of and from every perſon and perſons that ſhall bring any butter to the ſaid market to be ſearched and weighed, for the ſearching, weighing, and ſealing thereof, the ſeveral antient and accuſtomed rates and duties herein after mentioned, and no more; (that is to ſay) For every ſuch firkin, half-firkin, or other caſk or pot, or other veſſel of butter, as aforeſaid, one half-peny, and ſo proportionably for any butter put into every tub or veſſel containing any greater quantity of butter than a firkin; and in caſe of refuſal, neglect or denial of payment on demand of the ſaid ſeveral rates and prices before mentioned, the ſaid mayor and commonalty, and their ſucceſſors, ſhall or may detain and make ſtay of any firkin, half-firkin, caſk, pot, tub or veſſel of butter, for which the ſaid rates and prices ought to be paid, until they ſhall be paid and ſatisfied the ſame.

After March 25, 1722. Micklegate, or any other place in York, (at the election of the mayor, &c.) ſhall every day in the week, except Sundays be a free market for butter.

All butter brought to York to be ſold, exported, &c. ſhall be weighed, ſearch'd and ſeal'd at the ſaid market.

Rates to be paid for ſearching, &c.

On non-payment, &c. may detain any firkin, &c.

Sect. 2. And for the further prevention of any fraud or abuſe in the weight or falſe packing of butter, Be it further enacted by the authority aforeſaid, That if any dairy-farmer, owner, or trader, or any other perſons whatſoever, do or ſhall, from and after the ſaid five and twentieth day of *March* one thouſand ſeven hundred and twenty-two, bring any butter in firkins, half-firkins, or other caſks, pots, or veſſels, as aforeſaid, to the ſaid city of *York* to be ſold there, or to be exported or water-born from thence, as aforeſaid, from any part of the river *Ouſe*, as far as the river of *Wharfe*, and ſhall ſell or tranſport the ſame before it be brought to the butter-mar-

Dairy-farmer, &c. ſelling or tranſporting butter before it be brought to the market to be viewed, &c. ſhall forfeit for every firkin, &c. 3 s. 4 d.

ket, to be there viewed, searched, and weighed, shall, upon proof thereof by one or more credible witness or witnesses upon oath before any justice of the peace of the said city, or county of the same city, forfeit for every firkin, half-firkin, or other cask, pot, or other vessel, the sum of three shillings and four pence; and in default of payment thereof upon demand, the same shall or may be levied, by distress and sale of the offender's goods, by warrant under the hand and seal of any one or more justice or justices of the peace of the said city, and county of the same city, rendring to the offender the overplus (the charges of distraining being first deducted); and the one half of such forfeitures shall be to the use of the poor people inhabiting within the parish where the offence shall, from time to time, be committed, to be paid to the church-wardens and overseers of the poor of and in such parish, and the other half to the informer or informers.

To be levied by distress.

One half to the poor, where, &c. the other to the informer.

Sect. 3. "And whereas by an act of parliament made in the 13th and 14th years of the reign of the late king *Charles* the second, [intituled, "An act for reforming of the abuses committed in the weight and false packing of butter,] the weight thereof is ascertained, and the goodness of the butter is secured, under the pains and penalties therein mentioned; Be it further enacted by the authority aforesaid, that if any firkin, half-firkin, or pot, or other vessel of butter, which, from and after the said five and twentieth day of *March*, shall be brought to the market aforesaid by any owner, farmer, or packer of butter, shall be found, upon the searching and weighing thereof, to be faulty in the full quantity or due quality appointed by the said recited act, every such owner, farmer, or packer of butter, shall be liable to such pains, penalties and forfeitures, as are mentioned, contained, and expressed in the said recited act, to be levied as aforesaid.

13 & 14 Ca. 2. c. 26. s. 2.

If any firkin, &c. of butter, shall be faulty in quantity, or quality, the owner shall be liable to the forfeitures in 13 & 14 Ca. 2. c. 26.

Sect. 4. "Provided, that every prosecution or suit, which shall be brought for any offence committed against this act, shall be commenced within four months after the offence committed.

Prosecution to be in four months.

Sect. 5. "Provided always, That the officer or other person to be appointed for the searching, weighing and sealing of the said firkins, half-firkins, or other casks or pots of butter, shall be appointed by the mayor of the said city for the time being, and shall be sworn at the general quarter-sessions to be held for the said city of *York*, and county of the same, next after *Easter-day* yearly, for the due execution of the said office.

The mayor to appoint the searcher, who shall be sworn at Easter sessions.

Sect. 6. "Provided also, That if any person or persons shall think him or themselves aggrieved by any determination of any justice or justices of peace, who shall at any time act in pursuance to the power to him given by this act, it shall and may be lawful to and for such person or persons to appeal to the next general quarter-sessions of the peace to be held for the said city, and county of the same city, the determination whereof shall be final and conclusive to all parties, and they are hereby impowered to award costs to either party, as to them shall seem meet, in respect of such appeal.

Persons aggrieved may appeal to quarter-sessions, whose determination shall be final.

Sect. 7. "Provided also, and be it further enacted, That nothing in this act contained shall extend to compel the bringing to the said market any vessel

This act shall not extend to any vessel, containing only four pounds or under.

vessel of butter, which shall contain but the quantity of four pounds of butter, or under, or to make the said vessels liable to the said duty; any thing in this act contained to the contrary notwithstanding.

General issue.

Sect. 8. "And be it enacted, That in all actions and suits, that shall be brought against any person or persons, for what he or they shall do by virtue of the true intent and meaning of this act, the person or persons so sued or molested, shall or may plead the general issue of not guilty, and give the special matter in evidence; and in every such case, if the verdict shall pass for such person or persons, or that the plaintiff or plaintiffs be nonsuit therein, or in case such action or suit shall be discontinued,

Double costs.

the person so sued shall have his double costs, and shall recover the same as in cases where costs by law are accustomed to be recovered."

Stat. 17 *Geo.* 2. *c.* 8. [*A. D.* 1744. *intituled*] "An act to prevent the committing of abuses in the weighing and packing of butter, in the town and borough of *New Malton* in the county of *York*."

"Whereas great quantities of butter made and produced in several parts of the county of *York*, are brought into the town and borough of *New Malton*, where there is a navigable river, in order to be from thence transported beyond the seas, and otherwise sold and disposed of: And whereas there hath been time out of mind a free market for butter within the said town and borough of *New Malton*; but there is not (as in some other adjacent markets) any particular place provided and appointed, within the said town and borough, to which such butter shall be brought, in order to be searched, weighed, and sealed before the same be sold at the said market; and for want of which, great frauds and impositions have been made and committed by several farmers, dairymen, and other persons trading in butter, which hath tended to the disparagement of the said commodity, in the markets both at home and abroad, and to the great prejudice of the fair dealer, and of the butter trade in general: Wherefore, for preventing such frauds and abuses for the future, and for the better encouraging the said butter trade; may it please your most excellent majesty, at the humble request of the borough bailiff, and inhabitants of the said borough of *New Malton*, and of several other persons residing near the said borough, that it may be enacted, *&c.*"

Borough bailiff to appoint the place where the market is to be kept. Duty for searching, weighing, *&c.* Penalty for not bringing butter to market. Officer for searching, *&c.* to be appointed by the bailiff.

Stat. 3 *Geo.* 3. *c.* 20. *A. D.* 1763. *intituled*] "An act for permitting the importation, from *Ireland*, of stale and dirty butter, not fit for eating, commonly called grease butter."

"Whereas stale and dirty butter not fit for eating, called grease butter, is an essential ingredient in the manufactury of woollen cloth, commonly called broad and narrow bays, which is carried on to a great extent: And whereas, from the scarcity of the said ingredient, the said manufactury is, at

at preſent, greatly diſtreſſed, and is in danger of being reduced, and the exportation of ſuch goods greatly leſſened: And whereas the permitting the importation, from *Ireland*, of ſuch greaſe butter will be advantageous to the ſaid manufacture, and of great public utility; Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the paſſing of this act, the importation of ſtale and dirty butter, not fit to eat, called greaſe butter, from *Ireland*, ſhall be and is hereby permitted, allowed and authorized for and during the term of five years from thence next enſuing, and from thence to the end of the then next ſeſſion of parliament; and that all perſons ſhall be and are hereby exempted, freed and diſcharged from the payment of all ſubſidies, cuſtoms, rates, duties, or other impoſitions, and alſo from all penalties, forfeitures, payments and puniſhments, for or upon account of importing or bringing into any port within the kingdom of *Great Britain*, ſtale and dirty butter, not fit for eating, commonly called greaſe butter, from *Ireland*, during the term aforeſaid; provided ſuch butter, and the package and quantity thereof, ſhall be duly entered at the cuſtom-houſe at any ſuch port."

Importation of greaſe butter permitted from Ireland, duty free, for the term of 5 years.

upon duly entering the ſame at the cuſtom-houſe.

Sect. 2. "And be it further enacted by the authority aforeſaid, That in caſe any ſuch greaſe butter ſhall be ſtopped or ſeized by any of the officers of his majeſty's cuſtoms at ſuch port, under pretence of its being fit to eat, or otherwiſe, as not coming within the intent and meaning of this act, it ſhall be lawful for any two juſtices of the peace for the county, diſtrict or diviſion, where the ſame ſhall be ſtopped or ſeized, and ſuch juſtices are hereby authorized and required, within fourteen days after application made to them for that purpoſe, to hear and determine the matter in a ſummary way; and, for that purpoſe, to inſpect, if they think fit, the butter in queſtion; and alſo to call before them, and examine on oath, any two reputable perſons, dealers in butter; one whereof ſhall be allowed to be choſen by the importer or proprietor, and the other by the officer or other perſon ſo ſtopping or ſeizing ſuch greaſe butter, and alſo ſuch other witneſſes as ſhall be deſired by either party; and the determination of the ſaid juſtices therein, ſhall be binding and concluſive to and upon all parties, wherein no *certiorari* ſhall be allowed."

Where any ſhall be ſeized, as not coming within the meaning of this act, 2 juſtices of the peace may hear and determine the matter in a ſummary way, by inſpection, and examination of perſons on oath, in relation thereto.

Sect. 3. "And be it further enacted by the authority aforeſaid, That if any action or ſuit ſhall be commenced againſt any perſon or perſons for any thing done in purſuance of this act, the defendant or defendants in any ſuch action, or ſuit, may plead the general iſſue, and give this act and the ſpecial matter in evidence, at any trial to be had thereupon; and that the ſame was done in purſuance and by the authority of this act; and if it ſhall appear ſo to have been done, the jury ſhall find for the defendant or defendants; and if the plaintiff ſhall be nonſuited, or diſcontinue his action, after the defendant or defendants ſhall have appeared, or if judgment ſhall be given upon any verdict or demurrer againſt the plaintiff; the defendant or defendants ſhall and may recover treble coſts, and have the

General iſſue.

Treble coſts.

like remedy for the ſame, as any defendant or defendants hath or have in other caſes by law."

Stat. 5 *Geo.* 3. *c.* 1. [*A. D.* 1765. *intituled*] "An act for the importation of ſalted beef, pork, bacon and butter, from *Ireland*, for a limited time"

Preamble.

"Whereas the permitting the importation of ſalted beef, pork, bacon and butter, into the kingdom of *Great Britain*, from *Ireland*, for a limited time, may, at this time, be a great advantage to both kigdoms; Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That the importation of all ſalted beef, pork, bacon and butter, into the kingdom of *Great Britain*, from *Ireland*, ſhall be and is hereby permitted, allowed and authorized, for and during the term of twelve months from the commencement of this act; and that all perſons ſhall be and are hereby exempted, freed and diſcharged from the payment of all ſubſidies, cuſtoms, rates, duties, or other impoſitions, and alſo from all penalties, forfeitures, payments and puniſhments, for or upon account of importing or bringing ſalted beef, pork, bacon or butter into the kingdom of *Great Britain*, from *Ireland*, during the term aforeſaid, other than ſuch as herein after are mentioned in reſpect thereof; any act or acts of parliament to the contrary notwithſtanding.

The importation of ſalted proviſions allowed from Ireland for 12 months; Continued by 7 Geo. 3. c. 1. until Feb. 1. 1768.

upon payment of the following ſalt duties;

Sect. 2. "Provided always, and to the intent that the revenue ariſing from ſalt may not be prejudiced by ſuch importation of ſalted beef, pork, bacon or butter from *Ireland*, be it enacted, That from the commencement of this preſent act, during the continuance thereof, there ſhall be paid to ſuch officer as the commiſſioners for the duties on ſalt for the time being ſhall appoint, at the port of *Great Britain* into which ſuch ſalted beef, pork, bacon or butter ſhall, in purſuance of this act, be imported from *Ireland*, and before any part thereof ſhall be delivered out to the perſon or perſons to whom the ſame ſhall belong or be conſigned, the ſum of three ſhillings and four pence for every barrel or caſk of ſalted beef or pork to be imported during the continuance of this act, containing thirty-two gallons, and ſo in proportion for any greater or leſſer quantity; and for every hundred weight of bacon, ſalted beef called dried beef, dried neats tongues, and dried hog-meat, the ſum of one ſhilling and three pence; and for every hundred weight of all ſuch ſalted butter, the ſum of four pence; and ſo in proportion for every greater or leſſer quantity than an hundred weight of any ſuch ſalted beef called dried beef, bacon, dried neats tongues, or dried hog-meat, as or for cuſtom or for duty, or in reſpect thereof: the money ſo ariſing by the importation of the ſaid ſalted beef, pork, bacon, dried beef, dried neats tongues, dried hog-meat, or butter, to be paid into his majeſty's exchequer, as part of the duties on ſalt, laid by an act of the fifth year of the reign of his late majeſty king *George* the ſecond, and continued by ſeveral ſubſequent acts."

viz. 3s. 4d. per barrel for beef or pork;

1s. 3d. per 100 weight for all dried beef, neats tongues, and hog-meat; and 4d. per 100 weight for all ſalted butter; and ſo in proportion for all leſſer quantities.

The duties to be paid over into the exchequer as part of the duties on ſalt.

Sect.

Sect. 3. "And be it further enacted by the authority aforesaid, That if any person or persons shall, after the commencement and during the continuance of this act, land any such salted beef, pork, bacon or butter, or any salted beef called dried beef, dried neats tongues, or dried hog-meat, into the kingdom of *Great Britain*, from *Ireland*, before payment of the duty or duties by this act specified and directed, the same shall be forfeited and lost, and twenty shillings *per* barrel for every barrel or cask of such salted beef or pork, and twenty shillings *per* hundred weight for every hundred weight of such bacon, salted beef called dried beef, dried neats tongues, dried hog-meat, or salted butter, and so in proportion for any greater or lesser quantity, to be recovered of the importer or proprietor thereof; and that it shall and may be lawful to and for any person or persons, being an officer or officers of the customs, or of his majesty's duties upon salt, to take and seize all such commodities as shall be imported and landed contrary to the true intent and meaning of this act, together with the casks, vessels, and package containing the same; and that all such penalties and forfeitures shall be distributed in manner following; that is to say, one moiety thereof to the king, his heirs and successors, and the other moiety thereof, to the person or persons who shall seize, sue or inform for the same; to be recovered by action of debt, bill, plaint or information, in any of his majesty's courts of record at *Westminster*, or in the court of *exchequer* in *Scotland*; or may be sued for, recovered and mitigated as any forfeiture or penalty may be sued for, recovered and mitigated, by any of the laws relating to the duties on salt."

Provisions landed without the said duties being first paid, are forfeited; together with 20s. per barrel for all beef and pork, and 20s. per 100 weight for all dried meat and butter.

Recovery, mitigation, and application, of the penalties.

Sect. 4. "Provided always, and be it hereby enacted, That no drawback shall be allowed or paid for any such salted beef, pork, bacon, or butter, so imported into the kingdom of *Great Britain*, from *Ireland*, and which shall be exported from *Great Britain* elsewhere."

No drawback to be allowed on the exportation thereof elsewhere.

Sect. 5. "And be it further enacted by the authority aforesaid, That if any action or suit shall be commenced against any person or persons for any thing done in pursuance of this act, the defendant or defendants in any such action or suit, may plead the general issue, and give this act and the special matter, in evidence at any trial to be had thereupon; and that the same was done in pursuance and by the authority of this act; and if it shall appear so to have been done, the jury shall find for the defendant or defendants: and if the plaintiff shall be nonsuited, or discontinue his action, after the defendant or defendants shall have appeared; or if judgment shall be given upon any verdict or demurrer against the plaintiff, the defendant or defendants shall and may recover treble costs, and have the like remedy for the same, as any defendant or defendants hath or have in other cases by law."

General issue.

Treble costs.

This was a conviction for importing *Irish butter* from *Lisbon* into *England*, contrary to the act 32 *Car.* 2. *c.* 2. *sect.* 9. (see page 497.) Which conviction was to the effect following. Town and county of the town of *Kingston upon Hull*—Be it remembered, that on the 2d of *August* 34 *G.* 2. at the said town and county, *Edward Burrow* Esq; collector of his majesty's

Conviction on Stat. 32 Car. 2. c. 2. sect. 9 for importing butter into this

kingdom, from Ireland, was quashed, because the butter had been first exported from Ireland, to Lisbon, and from Lisbon hither. 2 Bur. Rep 1173. East. 1 Geo. 3. Rex v. Bell.

subsidies and customs within the port of the said town and county, and *an inhabitant* thereof, cometh in his own proper person before *John Wood* and *William Cogan* Esquires, two justices of our said lord the king assigned to keep the peace of our said lord the king within the said town and county; and, suing as well for the poor of the parish of St. *Trinity* in the said town and county, as for himself in this behalf, giveth the said justices to be informed and to understand, That certain *butter*, to wit, 547 barrels thereof, containing all together in weight 301 hundred-weight, was on the 8th day of *July* last past *imported into this kingdom*, to wit at the port of the said town and county, the same butter and every part thereof having been exported *from out of the kingdom of Ireland* TO LISBON in the kingdom of *Portugal*, and having been FROM THENCE *imported* into *this kingdom*, to wit at the port aforesaid, *in* FRAUD *of the revenue* of our said lord the king, and contrary to the form of the statutes in that case made and provided; And that the said butter had been duly and legally SEIZED, at and in the said town, on the 28th day of *July* aforesaid, between the hours of ten and twelve in the forenoon, and duly and legally preserved and kept from that time to the time of exhibiting this information; And that the *owner or owners of the said butter* or any part thereof, or any person for or on the behalf of him, them or any of them, *had not made it appear* to any justice of the peace of and for the said town and county, by the oath of two credible witnesses or otherwise howsever, "That the said butter was *not* imported in manner and form aforesaid, *from* the said kingdom of IRELAND into this kingdom." Whereupon the said justices did, on the 2d day of *August*, duly and legally order Mr. *Richard Bell* of the said town and country merchant, the *consignee and apparent owner* of the said butter and every part thereof, to be summoned to appear before them at the house of *Archibald Brown*, at the sign of the *Dog and duck* in the said town and county, on the 5th day of the said month of *August*, then and there to answer the said information and premisses. At which time and place come, before them the same justices, as well the said *Edward Burrow* as the said *Richard Bell*. And then the said *Richard Bell* having heard the said information read to him, and being asked by the said justices, "Why the said butter should not be *forfeited*," saith, That he hath *nothing to object* against the *truth* of the said premisses contained in the said information. Whereupon, and upon the examination of a credible witness in that behalf in the presence of the said *Richard Bell*, and because the said *Richard Bell* hath nothing to say, nor can say any thing touching the said premisses, but doth acknowledge the same to be true as the same are charged in the said information; It appears unto them the said justices, That the said information and every part thereof is true: And they the said justices do adjudge the same to be true accordingly. It is therefore considered and adjudged by them the said justices, That the said butter and every part thereof is FORFEITED; and that one moiety or half part thereof be disposed to the use of the poor of the said parish of St. *Trinity* in the said town and county, and the other moiety

moiety or half part thereof to be to the proper uſe of the ſaid *Edward Burrow*. Given under our hands and ſeals, at the town and county of the town of *Kingſton upon Hull*, this 5th day of *Auguſt* in the 34th year of, *&c.* and in the year of our *Lord* 1760.

Mr. *Morton*, for the defendant, inſiſted that this conviction ought to be quaſhed. This butter was exported from *Ireland* to *Liſbon*; and from *Liſbon re-exported to England*, and imported here at *Hull*: Which (he inſiſted) did not occaſion a *forfeiture* of the butter. Therefore this conviction is wrong, in making it abſolutely *forfeited*; even though it ſhould be liable to the greater duty, and not to the leſs. Beſides the *diſtribution of the penalty* is not agreeable to the act of parliament.

Mr. *Norton contra*, in ſupport of the conviction: *Iriſh butter*, imported from *Liſbon* or any other place, is confiſcatable, by 18 *Car.* 2. *c.* 2. 32 *Car.* 2. *c.* 2. *ſ.* 9. and 20 *C.* 2. *c.* 7. *ſect.* 3. all theſe acts are to be conſidered as one law. And by them, All *Iriſh* butter, imported hither from any place whatſoever, is forfeitable, juſt as much as if it was imported directly and immediately from *Ireland*. The acts of parliament would be nugatory, if they might be evaded by touching at the *Iſle of Man*, or any other place. The conviction is founded on theſe three ſtatutes of *C.* 2. And this importation from *Liſbon* is not protected by the act of 31 *G.* 2. *c.* 28: Which allows the importation of butter *from Ireland* into *England* during ſix months, paying 4 *d. per* hundred weight. Becauſe the butter permitted by that act to be imported muſt be imported *immediately* from *Ireland*. He compared this law to ſome others, where the importation muſt be *directly* from the place. — 12 *Geo.* 2. *c.* 21. (An act for taking off the duties upon woollen and bay yarn imported from *Ireland* to *England*;) 23 *G.* 2. *c.* 29. (An act to encourage the importation of pig and bar iron from his majeſty's colonies in *America*;) and 32 *Geo.* 2. *c.* 11, 12. However, this conviction was unneceſſary, and only *ex majori cautela*. For the goods were *actually and ipſo facto* forfeited by not being claimed and proved, *&c.* within forty-eight hours.

N B. the acts 18 Car. 2. and 20 Car. 2. c 7. do not concern butter, but cattle, ſheep, ſwine, beef, pork, and bacon.

Mr. *Morton* was going to reply — But lord *Mansfield* ſaid it was needleſs. — Here is no ſuſpicion of fraud. If there had, it might be a different caſe. It would not be worth while to go round by *Liſbon*, to evade the act; and to pay ſeven ſhillings and eight pence to avoid paying four pence. And if it be within the prohibition, it is within the permiſſion. His lordſhip however propoſed to the parties, That the officer of the cuſtoms (Mr. *Edward Burrow*, collector at *Hull*) ſhould pay the proprietor, (the conſignee,) the value of the butter at the time of the ſeizure, together with the coſts. And, in order to compromiſe the matter, and ſave the bringing an action, he ordered it to ſtand over from *Saturday* laſt to this day. A third perſon having now named twenty-ſix ſhillings *per* barrel as the price that Mr. *Burrow* ought to refund to the conſignee of it; And Mr. *Norton* thinking that too much; the compromiſe came to nothing.

For

For Mr. *Norton* thought it better for his client, to ſtand an action, and ſuffer judgment to go by defaulr, and leave the matter to a jury, upon a writ of inquiry of the damages ſuſtained by the ſeizure. Whereupon *Per Cur'* conviction was quaſhed."

Buttons.

STATUTE 13 & 14 *Car.* 2. *c.* 13. [*A. D.* 1662. *Intituled*] "An act prohibiting the importation of foreign bone-lace, cut-work, imbroidery, fringe, band-ſtrings, buttons and needle-work."

"Whereas great numbers of the inhabitants of this kingdom are imployed in the making of bone-lace, band-ſtrings, buttons, needle-work, fringe and imbroideries, who by their induſtry and labour have attained and gained ſo great ſkill and dexterity in the making thereof, that they make as good of all ſorts thereof, as is made in any foreign parts, by reaſon whereof they have been heretofore able to relieve their poor neighbours, and maintained their families, and alſo enabled to ſet on work many poor children, and other perſons who have very ſmall means, or maintenance of living, other than by their labours and endeavours in the ſaid art: (2) And whereas the perſons ſo imployed in the ſaid myſtery have heretofore ſerved moſt parts of this kingdom with bone-lace, band-ſtrings, buttons, needle-work and imbroidery; and for the carrying on, and managing of the ſaid trade, they have procured great quantities of thread and ſilk to be brought into the kingdom from foreign parts, whereby his majeſty's cuſtoms and revenues have been much advanced, (3) until of late, that great quantities of foreign bone-lance, band-ſtrings, needle-work, cut-work, fringe, ſilk, bone-lace, buttons and imbroidery were brought into this kingdom by foreigners and inhabitants of this kingdom, and ſold to ſhop-keepers, and others, dealers in the ſaid commodity, as well by wholeſale as retail, without ever entring of the ſame in any his majeſty's cuſtom-houſes, or paying any duty or cuſtom for the ſame; (4) by means whereof, the ſaid trade and calling is of late very much decayed, thoſe employed in the ſaid callings very much impoveriſhed, the manufacture much decreaſed, and great quantities thereof already made, left on their hands that make it, his majeſty defrauded and deceived in his cuſtoms, and many thouſand poor people formerly kept on work in the ſaid art, like to periſh for want of imployment; (5) there being daily great ſums of money exported out of this kingdom for the buying and fetching in of the ſaid commodity, to the great impoveriſhment of the nation by the conſumption of the bullion and treaſure thereof, and contrary

trary to ſeveral ſtatutes made in the firſt of king *Richard* the third, in the third of king *Edward* the fourth, in the nineteenth of king *Henry* the ſeventh, and the fifth of queen *Elizabeth*, and to a late proclamation made by his majeſty that now is, dated the twentieth day of *November* laſt, for the putting the ſaid laws in execution: 3 Ed. 4. c. 4. 1 R. 3. c 12. 19 H. 7. c. 21. 5 Eliz. c. 7.

Sect. 2. "For redreſs whereof, and prevention of the like miſchiefs for the future, and the better relief, comfort, and ſubſiſtence of thoſe imployed in the ſaid art and manufacture, and for the quickning, reviving, explaining, amending, and more effectual execution of the ſaid ſtatutes; (2) Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by authority of the ſame, That no perſon or perſons whatſoever ſhall, from and after the twenty-fourth day of *June* one thouſand ſix hundred ſixty-two, ſell or cauſe to be ſold, or offer to ſale, within the kingdom of *England*, or dominion of *Wales*, or export any foreign bone-lace, cut-work, imbroidery, fringe, band-ſtrings, buttons or needle-work made of thread, ſilk, or any or either of them, in parts beyond the ſeas, or import, bring in, ſend, or convey, or cauſe to be brought in, ſent or conveyed into the kingdom of *England*, or dominion of *Wales*, any ſuch foreign bone-lace, cut-work, fringe, imbroidery, band-ſtrings, buttons or needle-work, made of thread, ſilk, or any, or either of them, beyond the ſeas, after the firſt day of *May*, which ſhall be in the ſaid year of our lord one thouſand ſix hundred ſixty and two; (3) upon pain that all and every perſon or perſons who ſhall ſell, or cauſe to be ſold, or offered to ſale any ſuch foreign bone-lace, cut-work, imbroidery, fringe, band-ſtrings, buttons or needle-work, ſhall forfeit and loſe for every ſuch offence by him committed contrary to this act, the ſum of fifty pounds, and the whole bone-lace, cut-work, imbroidery, fringe, band-ſtrings, buttons or needle-work ſo ſold, or cauſed to be ſold, or offered to ſale: (4) And upon further pain, That all and every perſon or perſons who ſhall import, bring in, ſend or convey, or cauſe to be brought in, ſent or conveyed into this kingdom of *England*, or dominion of *Wales*, any ſuch bone-lance, cut-work, imbroidery, fringe, band-ſtrings, buttons or needle-work, ſhall forfeit and loſe for every offence by him committed contrary to this act, the ſum of one hundred pounds, and the whole bone-lace, cut-work, imbroidery, fringe, band-ſtrings, buttons or needle-work ſo imported, brought in, ſent or conveyed, or cauſed to be imported, brought in, ſent or conveyed contrary to the form and effect of this preſent act, as aforeſaid: (5) The moieties of all which forfeitures to be to the uſe of our ſovereign lord the king's majeſty, his heirs and ſucceſſors; and the other moiety to him or them that ſhall ſue for the ſame in any of the king's courts of record, by bill, plaint, action of debt, information or otherwiſe, wherein no eſſoin, protection, or wager of law ſhall be allowed, at every time, and as often as any perſon ſhall be found to offend in ſelling, importing, conveying or bringing in, as aforeſaid.

Foreign bone-lace, cut-work, imbroidery, fringe, band ſtrings, prohibited to be ſold, imported from beyond ſea.

This act enlarged by 4 & 5 W. & M. c. 10. as to foreign buttons made of hair, and repealed by 5 Annæ, c. 17. ſ. 1. as to foreign lace made of thread.

The penalty.

One moiety to the king, the other to the proſecutor.

"*Sect.* 3. And be it further enacted by the authority aforeſaid, That for the preventing of the importing of the ſaid manufactures, as aforeſaid, upon

Every juſtice of peace may grant warrants to

Search for manufactures prohibited by this act.

upon complaint and information given to the juſtices of the peace, or any, or either of them within their reſpective counties, cities and towns corporate, at times reaſonable, he or they are hereby authorized and required to iſſue forth his or their warrants to the conſtables of their reſpective counties, cities and towns corporate, to enter and ſearch for ſuch manufactures in the ſhops being open, or ware-houſes, and dwelling-houſes of ſuch perſon or perſons as ſhall be ſuſpected to have any ſuch foreign bone-laces, imbroideries, cut-work, fringe, band-ſtrings, buttons or needle-work, within their reſpective counties, cities and towns corporate, and to ſeize the ſame; any act, ſtatute or ordinance to the contrary thereof in any wiſe notwithſtanding.

The time limited for actions upon this act.

Sect. 4. "Provided always, and be it hereby enacted and declared, that all informations actions and ſuits, that ſhall be commenced for any offence committed againſt this law, ſhall be brought and commenced within twelve months after the diſcovery of ſuch offence; any former act or law to the contrary notwithſtanding."

Stat. 4 *Will. & Ma. c.* 10.]*A. D.* 1692. *Intituled*] "An act for prohibiting the importation of all foreign hair buttons."

13 & 14 Car. 2. c. 13.

"Whereas by an act made in the fourteenth year of the reign of his late majeſty king *Charles* the ſecond, intituled, "An act for prohibiting the importation of foreign bone-lance, cut-work, imbroidery, fringe, band-ſtrings, buttons, and needle work," amongſt other things in the ſaid act mentioned, all foreign buttons made of thread or ſilk are prohibited to be imported and ſold in the kingdom of *England*, or dominion of *Wales*: And whereas ſince the making of the ſaid act, hair buttons are chiefly uſed and worn, and the button makers of *England* do make better hair buttons than any that are imported from foreign parts, and are able to ſupply this kingdom with greater quantities of them than they can make uſe of; yet becauſe buttons made of hair are not expreſly mentioned in the ſaid act (although they were thereby intended to be prohibited) many perſons who are enemies to the manufactures of this kingdom, taking advantage of the ſaid omiſſion, do daily import ſuch great quantities of hair buttons, and the button trade of *England* is very much decayed, and many thouſands of poor people, that were formerly kept at work in the ſaid trade, are like to periſh for want of imployment, and all the other miſchiefs mentioned in the ſaid act, which relate to the button trade, and were thereby intended to be remedied, are become as great as they were at the time of making of the ſaid act, for redreſs, whereof, and the more effectual prevention of the like miſchiefs for the future:

Foreign hair buttons not to be imported, &c.

Sect. 2. "Be it enacted by the king's and queen's moſt excellent majeſties, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the five and twentieth day of *March* in the year of our lord one thouſand ſix hundred ninety and three, no foreign buttons made or to be made of hair, nor any other foreign

foreign buttons whatſoever, ſhall be imported, brought in, ſent or conveyed into the kingdom of *England*, dominion of *Wales*, or port or town of *Berwick* upon *Tweed*, or bartered, ſold, exchanged, or offered to be bartered, ſold or exchanged, upon pain of forfeiting all the ſaid buttons ſo imported, brought in, bartered, ſold or exchanged, or offered to be bartered, ſold, or exchanged, and upon ſuch further and other pains, penalties, and forfeitures as are mentioned, contained and expreſſed in the ſaid recited act; one moiety of all which forfeitures to be to the uſe of our ſovereign lord and lady the king and queen, their heirs and ſucceſſors, and the other moiety thereof to the perſon or perſons, that ſhall ſue for the ſame in any of their majeſties courts of record, by bill, plaint, action of debt, information, or otherwiſe, wherein no eſſoign, protection or wager of law ſhall be allowed. Penalty.

Sect. 3. "And be it further enacted by the authority aforeſaid, That for the preventing the importing, bartering, ſelling, vending, or expoſing to ſale any foreign buttons whatſoever, the juſtices of the peace within the kingdom of *England*, dominion of *Wales*, or port or town of *Berwick* upon *Tweed*, within their ſeveral and reſpective counties, cities and towns corporate, have the ſame authority and power, and the ſame authority and power is hereby given unto the ſaid juſtices, to iſſue forth their warrants to ſeize, or cauſe to be ſeized, all foreign buttons whatſoever, as by the ſaid act is given unto them for the ſeizing of foreign buttons made of thread or ſilk, and other the manufactures in the ſaid act mentioned." Juſtices of peace have power to ſeize.

Stat. 10 *Will.* 3. *c.* 2. [*A. D.* 1698. *Intituled*] "An act to prevent the making or ſelling buttons, made of cloth, ſerge, drugget, or other ſtuffs."

"Whereas the maintenance and ſubſiſtence of many thouſands of men, women, and children, within this kingdom, depends upon the making of ſilk, mohair, gimp, and thread buttons with the needle, and great numbers of throwſters, twiſters, ſpinners, winders, dyers and others are imployed in preparing the materials of which ſuch buttons are made: And whereas the ſilk and mohair, wherewith the ſaid buttons are made, is purchaſed in *Turkey*, and other foreign parts, in exchange for our woollen manufacture, to the great conſumption and encouragement thereof: And whereas the making of ſuch needle-wrought buttons hath of late been much leſſened and diſcouraged by the making and wearing of buttons made of the ſhreds of cloth, ſerge, drugget, frize, camlet, and other ſtuffs and materials of which clothes are uſually made, and alſo by buttons made of wood only, and turned in imitation of other buttons; to the great impoveriſhment of all thoſe whoſe livelyhood depended upon the making the ſaid needle-wrought buttons, and preparing the materials thereof; and to the great prejudice of the woollen manufacture wherewith ſuch materials are purchaſed, as aforeſaid; by which means great numbers of the ſaid poor people are become burdenſome to their reſpective pariſhes: For remedy whereof Be it enacted by the king's moſt excellent

majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the tenth day of *February* one thouſand ſix hundred ninety and eight, no perſon or perſons whatſoever, within the kingdom of *England*, dominion of *Wales*, and town of *Berwick* upon *Tweed*, ſhall make, ſell or ſet on, or cauſe to be made, ſold or ſet on any clothes or wearing garments whatſoever, any buttons made of cloth, ſerge, drugget, frize, camlet, or any other ſtuffs of which clothes and wearing garments are uſually made, or any buttons made of wood only, and turned in imitation of other buttons, upon forfeiture of the ſum of forty ſhillings for every dozen of ſuch buttons ſo made, ſold or ſet on, or cauſed to be made, ſold or ſet on, as aforeſaid, and in like proportion for any leſſer quantity; one moiety thereof to be to the uſe of his majeſty, his heirs and ſucceſſors, and the other moiety thereof to him, her or them that ſhall ſue for the ſame, by action of debt, bill, plaint or information, in any of his majeſty's courts of record, wherein no eſſoign, protection or wager of law, or more than one imparlance ſhall be allowed."

No buttons to be ſold, or made of cloth, ſerge, &c. or of wood. Penalty. The penalty made 5 l. by 8 Annæ, c. 6. and 40 s. laid on the wearer by 7 Geo. 1. ſtat. 1. c. 12. ſ. 1. 2 Salk. 612.

By *Stat.* 11 & 12 *Will.* 3. *c.* 3. *ſect.* 15. *Engliſh* bone-lace, needle-work, point, or cut-work may be exported cuſtom-free.

Stat. 8 *Ann. c.* 6. [*A. D.* 1709. *Intituled*] "An act for employing the manufactures by encouraging the conſumption of raw ſilk and mohair yarn."

"Whereas the maintenance and ſubſiſtence of many thouſands of men, women and children, within this kingdom of *Great Britain*, depends upon the making of ſilk, mohair, gimp and thread buttons and button-holes with the needle, and great numbers of throwſters, twiſters, ſpinners, winders, dyers and others are employed in preparing the materials of which ſuch buttons and button-holes are made: And whereas the ſilk and mohair wherewith the ſaid buttons and button-holes are made, is purchaſed in *Turkey* and other foreign parts, in exchange for the woollen manufactures of *Great Britain*, to the great conſumption thereof; and for the encouragement of ſuch numerous manufacturers and manufacrures, an act was made in the tenth year of the reign of his late majeſty king *William* the third (of glorious memory) (intituled, "An act to prevent the making or ſelling buttons, made of cloth, ſerge, drugget or other ſtuffs or materials,") under the forfeitures therein mentioned; but that the intended encouragement by the ſaid act has, in a great meaſure, been rendred ineffectual, by a late and unforeſeen practice of making and binding of button-holes with cloth, ſerge, drugget or other ſtuffs, to the great diſcouragement of and abatement in the conſumption of raw ſilk and mohair yarn, and the utter ruin of numerous families, who uſed to manufacture the ſaid materials, if not ſpeedily prevented: For remedy whereof, and making the ſaid recited act of parliament more effectual, Be it enacted by the queen's moſt excellent majeſty, by and with the advice and

10 W. 3. c. 2.

and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That, from and after the five and twentieth day of *March* one thouſand ſeven hundred and ten, no taylor, nor other perſon or perſons whatſoever, within the kingdom of *Great Britain*, ſhall make, ſell, ſet on, uſe or bind, or cauſe to be made, fold, ſet on, uſed or bound on any clothes, or wearing garments whatſoever, any buttons or button-holes made of, or uſed, or bound with ſerge, drugget, frize, camlet, or any other ſtuffs of which clothes and wearing garments are uſually made, upon forfeiture of the ſum of five pounds for every dozen of ſuch buttons or button-holes ſo made, ſold, ſet on, uſed or bound, or cauſed to be made, fold, ſet on, uſed or bound, as aforeſaid, and in like proportion for any leſſer quantity; one moiety thereof to be to the uſe of her majeſty her heirs and ſucceſſors, and the other moiety thereof to him, her or them that ſhall ſue for the ſame, by action of debt, bill, plaint or information, in any of her majeſty's courts of record, wherein no eſſoin, protection or wager of law, or more than one imparlance ſhall be allowed; or upon complaint to any two juſtices of the peace of the county, riding, diviſion, city or town corporate, where the matter in controverſy ariſeth, who are hereby impowered to ſummon, and examine witneſſes on oath concerning the ſame, and levy the penalty in this act mentioned, and return the overplus, if any be, to the owner or owners thereof: But in caſe any perſon ſhall think himſelf aggrieved by any judgment or order of the ſaid juſtices, it ſhall and may be lawful for ſuch perſon to appeal againſt the judgment and order of the ſaid two juſtices to the juſtices of the peace, in the general quarter-ſeſſions of the peace, which ſhall be held for the ſame county, riding, diviſion, city or town corporate, next after notice of ſuch order of the ſaid two juſtices; and the juſtices of the peace in the ſaid general quarter-ſeſſions, are hereby impowered to ſummon and examine witneſſes on oath, and to hear and finally determine the matter of the ſaid appeal; and in caſe the ſame juſtices in the ſaid general quarter-ſeſſions ſhall give judgment againſt ſuch appellant, then the ſame juſtices ſhall award and order to the party, on whoſe behalf the ſame appeal is determined, ſuch reaſonable coſts and charges to be paid by ſuch appellant, in regard of ſuch appeal, as to the ſame juſtices ſhall ſeem meet. And this act ſhall be taken and allowed, in all courts within this kingdom, as a publick act, and all judges, juſtices, and all other perſons therein concerned, are hereby required as ſuch to take notice thereof, without ſpecial pleading the ſame. This act is altered and farther enforced by 4 *Geo.* 1. *c.* 7. and by 7 *Geo.* 1. *ſtat.* 1. *c.* 12. *ſect.* 1. The penalty of forty ſhillings *per* dozen is laid on the wearer.

After March 25, 1710.

None ſhall make, ſell, &c. any buttons or button-holes made or bound with ſerge, &c. on forfeiture of 5l. for every dozen, &c.

One moiety to the queen, the other to him who will ſue, &c.

Two juſtices may by warrant levy the penalty.

But perſons aggrieved may appeal to the ſeſſions;

who are impower'd finally to determine the matter.

The appellant to pay coſts, if determined againſt him.

This to be taken as a publick act.

Stat. 4 *Geo.* 1. *c.* 7. [*A. D.* 1717. *Intituled*] "An act for making more effectual an act made in the eighth year of the reign of the late queen *Anne*," [intituled, *An act for employing the manufactures, by encouraging the conſumption of raw ſilk and mohair yarn.*]

Sect. 1. Whereas by an act made in the eighth year of the reign of her late majeſty queen *Anne*, [intituled, "An act for employing the manu- 8 A. c. 6.

factures, by encourging the conſumption of raw ſilk and mohair yarn"] the ſaid act having proved ineffectual to prevent the miſchiefs intended to be remedied by the ſaid act: For remedy whereof, and making the ſaid recited act of parliament more effectual, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That, from and after the twenty-fifth day of *March* one thouſand ſeven hundred and eighteen, no taylor, or other perſon or perſons whatſoever, within the kingdom of *Great Britain*, ſhall make, ſell, ſet on, uſe or bind, or ſhall cauſe to be made, ſold, ſet on, uſed or bound, on any clothes or wearing garments whatſover, any buttons or button-holes made of, or uſed or bound with cloth, ſerge, drugget, frize, camlet, or any ſtuffs that clothes or wearing garments are uſually made of, upon the forfeiture of the ſum of forty ſhillings for every dozen of ſuch buttons and button-holes ſo made, ſold, ſet on, uſed or bound, or ſhall cauſe to be made, ſold, ſet on, uſed or bound, as aforeſaid, or in proportion for any leſſer quantity; every perſon or perſons ſo offending, and being thereof lawfully convicted upon the oath of one or more credible witneſs or witneſſes, ſhall forfeit, as aforeſaid, to be recovered and diſtributed as is afterwards provided for by this act.

After March 25, 1718. no taylor, &c. ſhall make, ſell, ſet on, &c. any buttons or button-holes made of cloth, ſerge, &c. on any clothes whatſo ever, on penalty of 40 s. per dozen. By 7 Geo. 1. ſtat 1. c. 12. ſ. 1. 40 s. is laid on the wearer.

Not to extend to clothes made of velvet.

Sect. 2. " Provided, That nothing in this act contained ſhall extend, or be conſtrued to extend to any clothes or wearing garments made of velvet.

Perſons dwelling in gaols, &c. offending againſt this act, ſhall be ſubject to the penalties.

Sect. 3. And be it enacted by the authority aforeſaid, That any perſon or perſons inhabiting, or being in any gaol or houſe of correction, or within the rules or liberties of any gaol or houſe of correction, or ſhall inhabit or dwell in any privileged place, or within the liberties of the ſame, committing any offence or offences againſt this act, he, ſhe or they ſo offending, as aforeſaid, and being lawfully convicted of the ſame, as is before directed by this act, he, ſhe or they ſhall be ſubject to the forfeitures and penalties as in this act mentioned; any law, ſtatute, cuſtom or thing to the contrary in any wiſe notwithſtanding.

Proſecution in three months.

Sect. 4. " And be it enacted by the authority aforeſaid, That all offences committed againſt this act, ſhall be proſecuted within three months after the ſame is committed or diſcovered.

Offences to be determined by juſtices of peace.

Sect. 5. " And be it enacted by the authority aforeſaid, That all offences againſt this act ſhall be heard and determined by one or more of his majeſty's juſtice or juſtices of the peace of the county, city, town or place where the ſame ſhall be diſcovered, or where ſuch offender doth inhabit, ſuch juſtice or juſtices being not concerned in the matter of the ſaid complaint; upon the oath of one or more credible witneſs or witneſſes, which oath ſuch juſtice or juſtices is and are hereby impowered and required to adminiſter: And all and every the ſaid penalties and forfeitures, which ſhall happen by virtue of this act, ſhall be diſtributed and paid, after the charges of ſuch conviction being firſt deducted; one moiety to him or them who ſhall inform or proſecute for the ſame, the other moiety to the poor of the pariſh, townſhip or place where the offence ſhall be diſcovered;

On oath of one witneſs.

One half of the penalty to the informer, the other to the poor.

vered; and in case any offender shall neglect or refuse to pay any such penalties and forfeitures, being lawfully demanded, by the space of fourteen days next after conviction for such offence, as aforesaid, that then such justice or justices is and are hereby required to issue out one or more warrant or warrants under his or their hands and seals to the constable or constables of the parish, town or place where such offender doth inhabit, or can be found, to levy the same by distress and sale of the offender's goods, rendering the overplus (if any be) to the owner; and where no sufficient distress can be found, to commit the offender or offenders to the common gaol for the county, city, town or place, where such offender shall be found, there to be kept to hard labour for and during the space of three calendar months." To be levied by distress, if not paid in 14 days after conviction. For want of distress, offenders to be committed for three months.

Sect. 6. "Provided, That if any person or persons find him or themselves aggrieved by any order or warrant made by any justice or justices of the peace, upon any such conviction before him or them, as aforesaid, such person or persons may appeal to the general quarter-sessions to be holden for the county, riding, city or corporation, where such conviction shall be made, giving sufficient notice of such appeal; and the determination of such justices in such sessions shall be final; and the said justices shall allow such costs and charges to the party aggrieved as they shall think reasonable, to be levied and paid in such manner, as is usual in other cases of appeals from the orders of any justices of the peace to the quarter-sessions." Persons aggrieved may appeal to quarter-sessions; whose determination shall be final; and may allow costs.

Sect. 7. And be it enacted by the authority aforesaid, That if any action or suit shall hereafter be commenced or prosecuted against any person or persons so sued or prosecuted, such person or persons may plead the general issue, and give this act and the special matter in evidence; and if the plaintiff shall become nonsuited, or forbear further prosecution, or suffer discontinuance, or a verdict pass against him, or judgment upon demurer, the defendant or defendants shall recover his or their treble costs, for which he and they shall have like remedy, as in cases where costs by law are given to defendants." Persons sued may plead the general issue, and shall recover treble costs.

Sect. 8. "And be it enacted by the authority aforesaid, That all clothes or wearing garments, which shall be made with buttons and button-holes of the same cloth, serge, drugget, frize, camlet or other stuffs, of which the said clothes or wearing garments are made, and shall be exposed to sale in any fair or market, or in any shop or ware-house, or in any dwelling-house, or other place whatsoever, the same shall be subject and liable to be forfeited and seised, and applied to the uses in this act mentioned, to be recovered as other forfeitures and penalties are by this act to be recovered." Such clothes exposed to sale may be seised.

Sect. 9 "And be it enacted by the authority aforesaid, That if any taylor, or other person or persons, shall cause his or their apprentice or servants to make any clothes or wearing garments contrary to this act, that in such cases the said master-taylor, or such other person or persons which caused the said clothes or wearing garments to be so made, or shall be any ways entitled to the monies for making the said clothes or wearing garments made as aforesaid, shall be subject to the forfeitures and penalties Taylors, &c. causing their apprentices, &c. to make clothes contrary to this act, shall be subject to the penalties.

penalties in this act mentioned, to be had and recovered, as other forfeitures and penalties are to be recovered by this act; any thing herein contained to the contrary notwithſtanding. And this act ſhall be taken and allowed to be a publick act in all courts within this kingdom; and all judges and juſtices of the peace are hereby required to take notice thereof, as ſuch, without ſpecial pleading the ſame."

To be taken as a publick act.

Stat. 7 *Geo.* 1. *ſt.* 1. *c.* 12. [*A. D.* 1720. *intituled*] "An act for imploying the manufactures, and incouraging the conſumption of raw ſilk and mohair yarn, by prohibiting the wearing of button-holes made of cloth, ſerge or other ſtuffs."

8 Ann. c. 6. "Whereas by an act made in the eighth year of the reign of her late majeſty queen *Anne*, [intituled, *An act for employing the manufacturers by incouraging the conſumption of raw ſilk and mohair yarn*,] ſuggeſting therein, amongſt other things, that the maintenance of many thouſands of men, women and children, within this kingdom of *Great Britain*, depends on the making of ſilk, mohair yarn, and thread buttons and button-holes, with the needle; and that great number of throwſters, twiſters, ſpinners, winders, dyers and others are employed in preparing materials of which ſuch buttons and button-holes are made, It was provided, That, from and after the five and twentieth day of *March* one thouſand ſeven hundred and ten, no buttons or button-holes, made of cloth, ſerge, drugget, frize, camlet, or any other ſtuffs, ſhould be made, ſet or bound on any clothes or wearing garments whatſoever, by any taylor or other perſon or perſons whatſoever, on the forfeitures and the penalties in the ſaid act contained: And whereas for making the ſaid recited act more effectual, another act was made in the fourth year of his preſent majeſty, [intituled, *An act for making more effectual an act made in the eighth year of the late queen* Anne, *intituled*, "An act for imploying the manufacturers by incouraging the conſumption of raw ſilk and mohair yarn."] And whereas the ſaid ſeveral acts have not effecually anſwered the good ends thereby propoſed, and buttons and button-holes made of cloth, ſerge, drugget, frizes, camlet and other the ſaid ſtuffs, are ſtill uſually made, ſet and bound on clothes and wearing garments, to the great impoveriſhment of the ſaid manufacturers of needle-work, buttons and button-holes, and other the ſaid perſons imployed in preparing the materials thereof, and to the exceſſive increaſe of the poor, and if not prevented, may be the utter ruin of the ſaid manufacturers, and many thouſands of your majeſty's ſubjects and their families, whoſe livelihoods do intirely depend thereupon: For remedy whereof, may it pleaſe your moſt excellent majeſty, that it may be enacted; and Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the nine and twentieth day of *September*, which ſhall be in the year of our lord one thouſand ſeven hundred and twenty-two, it ſhall not be lawful for any perſon or perſons whatſoever, within the kingdom of *Great Britain*, to uſe

4 Geo. 1. c. 7.

After 29 Sept. 1722. No Perſon ſhall wear on any clothes buttons made of cloth,

or wear on any clothes, garments, or apparel whatſoever, any buttons or button-holes made of or bound with cloth, ſerge, drugget, frize, camlet, or any ſtuffs, whereof clothes or wearing garments are uſually made; and that if any perſon or perſons whatſoever, within the kingdom of *Great Britain*, ſhall uſe or wear any buttons or button-holes, made of or bound with cloth, ſerge, drugget, frize, camlet or other ſtuffs, as aforeſaid, ſuch perſon or perſons, being thereof lawfully convicted by the oath of one or more credible witneſs or witneſſes, or by confeſſion of the party, in manner as is herein after mentioned, ſhall forfeit, for every dozen of ſuch buttons or button-holes ſo uſed or worn, the ſum of forty ſhillings, or in proportion for every leſſer quantity of ſuch buttons and button-holes; to be recovered and diſtributed as herein after is provided.

&c. on penalty of 40 s. per dozen.

" *Sect.* 2. " And for the more eaſy conviction of offenders againſt this act, and for the more eaſy recovery of the penalties and forfeitures aforeſaid, Be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for any one or more of his majeſty's juſtices of the peace of the county, riding, city, town or place, where any offence ſhall be committed againſt this act, or where ſuch offender ſhall inhabit, and ſuch juſtice or juſtices are hereby required and enjoined, upon any complaint or information upon the oath of one or more credible perſon or perſons (which oath ſuch juſtice or juſtices is and are hereby impowered and required to adminiſter) to ſummon the party or parties accuſed, and upon his, her or their appearance or contempt, to proceed to the examination of the matter of fact, and upon due proof made, either by confeſſion of the party, or the oath or oaths of one or more credible perſon or perſons, of any offence committed contrary to this act, to determine the ſame, and convict the offender or offenders thereof; and upon conviction to cauſe the ſaid penalties or forfeitures, upon the offender or offenders refuſing to pay the ſame on demand, at ſuch time or times as the ſaid juſtice or juſtices ſhall appoint, by warrant or warrants under his or their hands and ſeals, to be levied by diſtreſs and ſale of the goods and chattels of ſuch offender or offenders, rendering to him, her or them, the overplus, if any ſhall be, the charges of ſuch diſtreſs and ſale being thereout firſt deducted; and all and every the penalties and forfeitures under this act, ſhall be diſtributed and paid in manner following, (that is to ſay) One moiety thereof to him, her or them, on whoſe oath or oaths any perſon or perſons ſhall be convicted of any offence againſt this act, and the other moiety to the poor of the pariſh where ſuch offence or offences ſhall be committed."

Conviction before one juſtice of peace.

Penalties to be levied by diſtreſs.

One moiety to the informer, the other to the poor.

Sect. 3. " Provided nevertheleſs, That it ſhall and may be lawful to or for any party or parties aggrieved by the order, determination, or warrant of ſuch juſtice or juſtices, as aforeſaid, to appeal to the juſtices of the peace at the next general quarter-ſeſſions, to be holden for the county, riding, city or place where the ſaid offence or offences ſhall have been committed, giving eight days notice at the leaſt, of ſuch appeal to the proſecutor or proſecutors; which juſtices at the ſaid ſeſſions are hereby authoriſed and required to hear and determine the ſame, and their judgment therein ſhall be final.

Appeal to Quarter-ſeſſions, whoſe judgment ſhall be final.

Sect. 4.

Profecution in one month.

Sect. 4. "Provided alſo, That all offences againſt this act ſhall be proſecuted within one month after ſuch offence committed, and not after."

Not to extend to clothes of velvet.

Sect. 5. "Provided alſo, That nothing in this act contained ſhall extend or be conſtrued to extend to any clothes or wearing apparel made of velvet."

General iſſue, &c.

Sect. 6. "Provided alſo, That if any action or ſuit ſhall hereafter be commenced or proſecuted againſt any perſon or perſons ſo ſued or proſecuted, as aforeſaid, ſuch perſon or perſons may plead the general iſſue, and give this act and the ſpecial matter in evidence; and if the plaintiff ſhall become nonſuited, or forbear further proſecution, or ſuffer diſcontinuance, or a verdict to paſs againſt him or her, or judgment upon demurrer, the defendant or defendants ſhall recover his, her or their treble coſts, for which he, ſhe or they ſhall have like remedy as in caſes where coſts by law are given to defendants."

Treble coſts.

Publick act.

Sect. 7. "And be it further enacted by the authority aforeſaid, That this act ſhall be taken and allowed to be a publick act in all courts within this kingdom of *Great Britain*; and all judges and juſtices of the peace are hereby required to take notice thereof as ſuch, without ſpecial pleading the ſame."

Lord Raym. 712. Hil. 13 Will. 3. Rex v. Roberts.

An information was exhibited againſt the defendant for having made wooden buttons, contrary to the late act of parliament. Upon not guilty pleaded, it was tried before *Gould* juſtice at *Lincoln*, being juſtice of aſſiſe; and a ſpecial verdict was found there, *viz.* That all the button was of wood, but there was in it a ſhank of wire. And after argument by Mr. ſerjeant *Neve* for the king, and Mr. ſerjeant *Mundy* for the defendant, judgment was given for the king, *viz.* that this was a button of wood, notwithſtanding the ſhank, which is no eſſential part of buttons; for buttons of ſilk and hair have no ſhanks. Adjudged accordingly *Paſch.* 5 *Ann. B. R. Dunne qui tam, &c. verſ. Hinchdy.*

2 Salk. 612. Pach. 5 Ann. B. R. Dunn *qui tam* v. Hinchdy.

Debt upon the ſtatute 10 *W.* 3. *c.* 2. for twelve dozen of buttons made *de ligno tantum* in imitation of, *&c.* The jury found the buttons were all wood but the ſhanks, which were braſs, and that they were made in imitation, *&c.* and that they were buttons made *de ligno tantum*, *&c. Weld* ſaid, that it now appeared the ſtatute was applicable, and might have its effect upon other buttons, and that a penal law was to be conſtrued ſtrictly, and not by intendment. *Vide* 2 *Inſt.* 199. *Plo.* 47. *a.* But the court reſolved they were prohibited by the act; for the ſhank is no part of the button, but added to faſten it. And if buttons thus made in imitation, *&c.* by having a braſs ſhank added, ſhould be out of the act, it would be in every body's power to evade it. Adjudged.

Cambricks.

STATUTE 18 *Geo.* 2. *c.* 39. [*A. D.* 1745. *intituled*] "An act for prohibiting the wearing and importation of cambricks and *French* lawns."

"Whereas it is evidently for the advantage of this kingdom, that the wearing of cambricks and *French* lawns ſhould be prohibited; Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the twenty-fourth day of *June*, which ſhall be in the year of our Lord one thouſand ſeven hundred and forty-eight, it ſhall not be lawful for any perſon or perſons whatſoever to wear in *Great Britain*, in any garment or apparel whatſoever, any cambrick or *French* lawn, under the penalty of forfeiting to the informer the ſum of five pounds, of lawful money of *Great Britain*, for every ſuch offence, being lawfully convicted thereof by the oath or oaths of one or more credible witneſs or witneſſes, before any one or more juſtice or juſtices of the peace; which juſtice or juſtices is and are reſpectively authorized, and ſtrictly injoined and required, upon any complaint or information upon oath, exhibited or brought of any ſuch offence committed contrary to this act, within ſix days after commitment thereof, to ſummon the party accuſed, and upon his or her appearance or contempt, to proceed to examination of the matter of fact; and upon due proof thereof made, either by voluntary confeſſion of the party, or by the oath or oaths of one or more credible witneſs or witneſſes (which oath or oaths the ſaid juſtice or juſtices is and are hereby reſpectively impowered and required to adminiſter) to hear and determine the ſame; and upon ſuch conviction, to cauſe the ſaid penalty, by warrant under his or their hand and ſeal, or hands and ſeals reſpectively, to be levied by diſtreſs and ſale of the offenders goods and chattels, rendering the overplus (the charges of ſuch diſtreſs and ſale being firſt deducted); nevertheleſs it ſhall be lawful for the party aggrieved, to appeal to the juſtices of the peace at the next general quarter-ſeſſions to be holden for the county, city, riding or place, where the ſaid offence or offences ſhall have been committed, giving ſix days notice at leaſt of ſuch appeal to the proſecutor or proſecutors; which juſtices, at ſuch general quarter-ſeſſions, are hereby authorized and impowered to hear and determine the ſame, whoſe determination ſhall be final."

No cambrick or French lawn to be worn, under penalty of 5 l. See 21 Geo. 2. c. 26.

Juſtice to ſummon the party accuſed.

Penalty to be levied by diſtreſs and ſale.

Appeal to the quarter-ſeſſions; giving ſix days notice.

Sect. 2. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and forty-eight, vend, utter, ſell or expoſe to ſale any cambricks or *French* lawns, made or not made up, ſuch perſon or perſons ſo vending, uttering, ſelling or expoſing the ſame to ſale (except for exportation only) and ſhall thereof be convicted,

Sellers of cambrick to forfeit 5 l.

ted, ſhall forfeit and pay the ſum of five pounds, to be recovered and levied as aforeſaid."

The perſon wearing cambricks diſcovering the feller, ſhall be diſcharged.

Sect. 3. "Provided always, and it is hereby declared, That if any perſon or perſons ſhall, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and forty-eight, be proſecuted by this act for wearing in or on any garment or apparel, any cambricks or *French* lawns, and ſuch perſon or perſons ſhall diſcover upon oath, before any one or more juſtice or juſtices of the peace, the perſon or perſons who ſold ſuch cambricks or *French* lawns to ſuch perſon or perſons ſo wearing the ſame, ſuch perſon or perſons ſo diſcovering as aforeſaid, ſhall be, and is and are hereby freed and diſcharged of and from all and every ſuch penalties and forfeitures, as aforeſaid, for wearing ſuch camb icks or *French* lawns; and the perſon and perſons, ſo ſelling ſuch cambricks or *French* lawns to ſuch perſon or perſons as ſhall wear the ſame, ſhall be liable to the penalties and forfeitures herein before laid and inflicted; and the ſame ſhall be recovered and levied, and diſpoſed of in ſuch manner, as the penalties and forfeitures which are inflicted by this act for wearing of cambricks and *French* lawns."

No cambricks, &c. to be imported till proof made that they are the property of his majeſty's ſubjects.

Sect. 4. "And it is further enacted by the authority aforeſaid, That, from and after the tenth day of *May* one thouſand ſeven hundred and forty five, no cambricks or *French* lawns ſhall be admitted to be imported or entered into any port of *Great Britain*, until after proof upon oath ſhall have been made by the importer, or if a *Quaker*, by affirmation, at the time of entering the ſame, before the proper officer or officers of the cuſtoms at the port of importation (which oath or affirmation ſuch officer or officers are hereby impowered and required to adminiſter) either that the ſame are the ſole property of the importer, or of ſome other of his majeſty's ſubjects, and that no alien or foreigner hath any property, intereſt or concern whatſoever therein; or otherwiſe, if any alien or foreigner hath any intereſt or property therein, then, and in that caſe, proof ſhall be given by the importer, to the ſatisfaction of the aforeſaid officers of his majeſty's cuſtoms, that the ſame were really and *bona fide* ſhipped in order for direct importation into *Great Britain*, on or before the ſaid tenth day of *May* one thouſand ſeven hundred and forty-five."

If any alien hath intereſt therein, proof to be made that they were ſhipped for importation before May 10, 1745.

No foreign cambricks to be imported.

Sect. 5. "And be it further enacted by the authority aforeſaid, That from and after the firſt day of *Auguſt* one thouſand ſeven hundred and forty-five, it ſhall not be lawful for any perſon or perſons whatſoever, to import or enter into any port of *Great Britain*, any foreign cambricks or *French* lawns, unleſs bills of loading be produced for the ſame, or ſuch other proof or evidence be given to the commiſſioners of his majeſty's cuſtoms, or to the chief officer or officers of the cuſtoms at the port of importation, as they ſhall think ſufficient or require, that the ſaid cambricks or *French* lawns were really and *bona fide* ſhipped for direct importation into *Great Britain*, on or before the ſaid firſt day of *Auguſt* one thouſand ſeven hundred and forty five."

Conditions on which cambricks, &c.

Sect. 6. "Provided always, That it ſhall and may be lawful to import or enter into any part of *Great Britain*, after the firſt day of *Auguſt* one thouſand

thouſand ſeven hundred and forty-ſix, any cambricks, *French* lawns, or other linen whatſoever, of the kind uſually entered under the denomination of cambricks, upon the importer making oath, or if a Quaker, affirmation, that they are intended for exportation only, and that they are really and *bona fide* the property of the importer, or of ſome other of his majeſty's ſubjects, and that no alien or foreigner hath any intereſt or property therein; and alſo upon the ſaid importer giving ſufficient ſecurity by bond, to the ſatisfaction of the commiſſioners of the cuſtoms, or the chief officer or officers thereof, at the port of importation, for the uſe of his majeſty, his heirs and ſucceſſors, in double the value of the goods ſo imported, ſuch value to be aſcertained by the oath or affirmation of the importer as aforeſaid; and which bonds, oaths and affirmation reſpectively, the proper officers are hereby authorized and required to receive and adminiſter, for payment of the ſum of five pounds for each and every piece of ſuch cambricks and *French* lawns, which ſhall not be exported out of this kingdom, within the term of three years, after the entry of the ſame; any thing to the contrary in this preſent act in any wiſe notwithſtanding."

may be imported, on proof that they are ſubjects property; and ſecurity given that they ſhall be exported in 3 years.

Sect. 7. "Provided alſo, That in caſe any piece or pieces of cambrick or lawn ſo imported as aforeſaid, ſhall by fire, or any other unavoidable accident, be loſt or deſtroyed, then and in that caſe, and upon making proof of ſuch loſs, to the ſatisfaction of his majeſty's commiſſioners of the cuſtoms, or of the chief officer or officers thereof, at the port of importation, the ſaid commiſſioners, or chief officer or officers, are hereby authorized and required to remit to the ſaid importer the ſaid penalty of five pounds, payable for each and every piece not ſo exported as aforeſaid; any thing to the contrary in this preſent act in any wiſe notwithſtanding."

Pieces loſt by fire, &c. not liable to the penalty.

Stat. 21 *Geo.* 2. *c.* 26. [*A. D.* 1748. *Intituled*] "An act for explaining, amending and enforcing an act made in the eighteenth year of the reign of his preſent majeſty, intituled, *An act for prohibiting the Wearing and Importation of cambricks and* French *lawns.*"

"Whereas by an act made in the eighteenth year of the reign of his preſent majeſty (intituled, "An act for prohibiting the wearing and importation of cambricks and *French* lawns) it is (amongſt other things) enacted, That from and after the twenty-fourth day of *June*, which ſhall be in the year of our lord one thouſand ſeven hundred and forty-eight, it ſhall not be lawful for any perſon or perſons whatſoever to wear in *Great Britain*, in any garment or apparel whatſoever, any cambrick or *French* lawn, under penalty to the informer of five pounds of lawful money of *Great Britain*, for every ſuch offence, being thereof lawfully convicted by the oath or oaths of one or more witneſs or witneſſes, before any one or more juſtice or juſtices of the peace, to be levied and recovered as is therein directed; And whereas it is further enacted by the aforeſaid act, That, from and after the ſaid twenty-fourth day of *June* one thouſand

18 Geo. 2. c. 36.

ſeven hundred and forty-eight, if any perſon ſhall vend, utter, ſell or expoſe to ſale any cambricks or *French* lawns, made, or not made up, ſuch perſon or perſons ſo vending, uttering, ſelling or expoſing the ſame to ſale (except for exportation only) who ſhall be thereof convicted, ſhall forfeit and pay the like ſum of five pounds, to be recovered and levied as aforeſaid: And whereas it is further provided and declared by the ſaid act, That if any perſon ſhall, after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and forty-eight, be proſecuted for wearing ſuch cambrick or *French* lawn, and ſuch perſon ſhall diſcover upon oath, before any one or more juſtice or juſtices of the peace, the perſon or perſons who ſold ſuch cambricks or *French* lawns to ſuch perſon wearing the ſame, ſuch perſon ſo diſcovering as aforeſaid, ſhall be and is thereby diſcharged from all penalties and forfeitures inflicted by the ſaid act; and that the perſon or perſons ſo ſelling ſuch cambrick or *French* lawns, ſhall be liable to the penalties and forfeitures laid and inflicted by the ſaid act: And whereas ſome doubts have ariſen, or may ariſe, whether by the words of the ſaid recited act any penalty can be inflicted, either upon the wearer of any ſuch cambrick or *French* lawn, who ſhall diſcover the vender or ſeller thereof, or upon the vender or ſeller ſo diſcovered by the wearer thereof, in caſe it ſhall appear that the ſaid cambrick or *French* lawn was ſold to ſuch wearer, previous to the aforeſaid twenty-fourth day of *June* one thouſand ſeven hundred and forty-eight; by which means ſuch cambricks and *French* lawns may happen to be worn for a great number of years, without any penalty whatſoever laid or inflicted, either on the wearer or ſeller thereof, contrary to the true intent and meaning of the ſaid act, ſo evidently advantageous to this kingdom: And whereas it may be difficult for many perſons to aſcertain upon oath, where or from whom ſuch cambricks or *French* lawns were bought, which have been for any conſiderable time in their poſſeſſion: For the avoiding therefore of all ſuch doubts and difficulties as aforeſaid, Be it enacted and declared; and it is hereby enacted and declared by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons, who after the twenty-fourth day of *June* one thouſand ſeven hundred and forty-eight, and before the twenty-fifth day of *March* one thouſand ſeven hundred and forty-nine, ſhall be proſecuted for wearing in or on any garment or apparel, any cambricks or *French* lawns, ſhall make an affidavit, or bring ſufficient proof, or by the oath or affidavit of the huſband or wife of the party accuſed, or by the oath or affidavit of any other credible perſon, before one or more juſtice or juſtices of the peace, that the ſame was bought on or before the twenty-fourth day of *June* one thouſand ſeven hundred and forty-eight, ſuch wearer ſhall be and is hereby diſcharged from any penalty or forfeiture inflicted by the ſaid act.

Perſons proſecuted for wearing cambrick, producing proof that the ſame was bought before 24 June 1748, diſcharged.

Sect. 2. "And be it further enacted by the authority aforeſaid, That at any time from and after the twenty-fourth day of *June* one thouſand ſeven hundred and forty-eight, if any wearer of cambrick or *French* lawn

The vender convicted of ſelling cambrick after

lawn, who ſhall be proſecuted by virtue of the ſaid in part recited act for wearing the ſame, and who ſhall have purchaſed the ſame after the twenty-fourth day of *June* one thouſand ſeven hundred and forty-eight, ſhall diſcover, to the ſatisfaction of the juſtice or juſtices, the vender or ſeller of ſuch cambrick or *French* lawn, and likwiſe that the ſame was ſold by ſuch vender or ſeller after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and forty-eight, ſo as ſuch vender or ſeller be convicted, and become liable to the penalties and forfeitures laid and inflicted by the ſaid act, then, and not otherwiſe, ſuch wearer ſo proſecuted ſhall be and is hereby diſcharged from any penalty or forfeiture laid or inflicted by the ſaid act; any thing in this or in the ſaid act to the contrary notwithſtanding. 24 June 1748, to be liable.

Sect. 3. "And it is hereby further enacted by the authority aforeſaid, That whenever any perſon informed againſt for wearing ſuch cambrick or *French* lawn ſhall be excuſed from the penalty by diſcovering the vender or ſeller thereof, the penalty to be levied and inflicted on ſuch vender or ſeller, in every ſuch caſe, ſhall go and belong to the perſon who informed againſt the wearer thereof. Penalties to go to the informer.

Sect. 4. "And whereas the penalties, to which wearers of cambricks or *French* lawns are made ſubject, either by the ſaid former law, or this preſent act, cannot, in caſe the perſon convicted be a feme covert, be levied by law on the goods and chattels of her huſband, by means of which the intent of the ſaid former and of this preſent act may happen to be evaded: For remedy thereof, be it further enacted by the authority aforeſaid, That in all caſes where the offender ſhall, at the time of the offence committed, or at the time of the conviction, happen to be a feme covert, living with her huſband, the penalties which ſhould be levied on the goods and chattels of ſuch offender, in caſe ſhe had been then unmarried, ſhall and may be levied on the goods and chattels of her huſband; any law to the contrary notwithſtanding. Penalties incurred by a feme covert, to be levied on the goods of the huſband.

Sect. 5. "And be it further enacted by the authority aforeſaid, That if any milliner, ſempſtreſs, or other perſon whatſoever, ſhall for hire, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and forty-eight, make up any cambrick or *French* lawn for, in or upon any garment or wearing apparel, ſuch milliner, ſempſtreſs, or other perſon, ſhall be liable to the like penalties and forfeitures, as the ſellers of cambrick or *French* lawn are liable to, by virtue of the ſaid act of the eighteenth year of his majeſty's reign, to be proſecuted and levied; and the ſaid penalties and forfeitures to be applied in the like manner, as the ſeveral penalties and forfeitures are directed to be proſecuted, levied and applied by this or the ſaid in part recited act. Milliners making up cambricks, liable to the penalties.

Sect. 6. "And be it further enacted by the authority aforeſaid, That in all caſes wherein by this act an oath is required to be made and taken, the ſolemn affirmation of any perſon, being a Quaker, ſhall and may be accepted and taken in lieu thereof; and that every inſtance of wilful and corrupt falſe affirming ſhall ſubject ſuch perſon to the ſame penalties and forfeitures, as he would by law have been liable to, if the ſame matter had been declared upon oath or affidavit directed by this act." Quaker's affirmation to be taken. Penalty of falſe affirming.

Stat.

Stat. 32 *Geo.* 2. *c.* 32. [*A. D.* 1758. *intituled*] "An act for the more effectual preventing the fraudulent importation of cambricks and *French* lawns."

Whereas the acts made in the eighteenth and twenty-firſt years of the reign of his preſent majeſty, for prohibiting the wearing and importation of cambricks and *French* lawns, have not been effectual to prevent the fraudulent importation thereof; therefore, for the amending and enforcing the ſaid acts, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the firſt day of *Auguſt* one thouſand ſeven hundred and fifty-nine, no cambricks, *French* lawns, or other linens whatſoever, of the kind uſually entered under the denomination of cambricks, ſhall be imported, or brought into any port or place whatſoever within *Great Britain*, unleſs the ſame be packed in bails, caſes or boxes, covered with ſackcloth or canvas, each of which bales, caſes or boxes ſhall contain one hundred whole pieces, or two hundred demi or half pieces of ſuch cambricks or *French* lawns."

No cambricks or French lawns to be imported but in bales, &c. covered with cloth, containing each 100 Whole pieces, or 200 Half pieces; on penalty of forfeiture thereof.

Sect. 2. "And be it further enacted, That in caſe any cambricks or *Franch* lawns ſhall be imported in any other form or manner, or in any leſs quantity, than is herein before mentioned and allowed, in each and every of the ſaid caſes, the cambricks or *French* lawns ſo imported, or found on board any ſhip or veſſel in this kingdom, ſhall be forfeited, and ſhall and may be ſeized by any officer or officers of the cuſtoms."

The ſame to be imported for exportation only, and to be lodged in the king's warehouſes, and delivered out under like ſecurity and reſtrictions as prohibited Eaſt India goods.

Sect. 3. "And be it further enacted by the authority aforeſaid, That, from and after the ſaid firſt day of *Auguſt* one thouſand ſeven hundred and fifty-nine, cambricks and *French* lawns ſhall be imported for exportation only, and ſhall be lodged in ſuch warehouſe belonging to his majeſty, his heirs and ſucceſſors, as the commiſſioners of the cuſtoms, or any three or more of them, for the time being, ſhall appoint; and ſhall not be delivered out of ſuch warehouſe, but under the like ſecurity and reſtrictions as *Eaſt India* goods, prohibited to be conſumed in *Great Britain*, are now liable to."

One half of the old ſubſidy payable only upon the importation.

Sect. 4. "And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *Auguſt*, there ſhall be no cuſtoms or duties whatſoever paid, or ſecured to be paid, for any cambricks or *French* lawns imported, or which ſhall be imported, and depoſited in ſuch warehouſe as aforeſaid, other than one half of the old ſubſidy, which is to remain by law, after the goods are exported again."

What goods ſhall be in private cuſtody, are to be depoſited by 1 Auguſt next in the king's Warehouſes;

Sect. 5. "And be it further enacted by the authority aforeſaid, That all and every perſon and perſons having in their cuſtody any cambricks or *French* lawns imported before the ſaid firſt day of *Auguſt*, for the exportation whereof, within the time limited by the law, bond has been given, ſhall, on or before the firſt day of *Auguſt* next, bring and depoſit, or cauſe to be brought and depoſited, all ſuch cambricks and *French* lawns, in ſuch warehouſe as ſhall be approved of by the commiſſioners aforeſaid for that purpoſe;

purpoſe; and upon the depoſiting of ſuch goods in ſuch warehouſe aforeſaid, the bonds for the exportation thereof ſhall be delivered up to the perſon or perſons who gave the ſame, or his or their heirs, executors, adminiſtrators or aſſigns, who ſhall likewiſe receive at the ſame time from the collector, or other proper officer of the cuſtoms at the port where ſuch bond was given, all the duties which ſuch goods would be intitled to draw back upon exportation: And ſuch goods ſhall not be again delivered out of the ſaid warehouſe but for the exportation thereof, in like manner as if the ſame had been depoſited therein at the importation: And in caſe any perſon or perſons ſhall ſell, offer or expoſe to ſale, or after the ſaid firſt day of *Auguſt* have in his, her or their cuſtody or poſſeſſion, for that purpoſe, any cambricks or *French* lawns (other than in ſuch warehouſe as ſhall be approved of by the ſaid commiſſioners as aforeſaid) the ſame ſhall be forfeited, and ſhall be liable to be ſearched for and ſeized in like manner as other prohibited and uncuſtomed goods are; and every ſuch perſon ſhall alſo forfeit two hundred pounds, over and above all other penalties and forfeitures inflicted upon ſuch perſon or perſons by any former act."

and the Bonds thereupon to be delivered up, and the drawback upon exportation to be paid, and the goods not to be delivered out again but for exportation. Goods expoſed to ſale, or found in private poſſeſſion, after the ſaid day, may be ſeized, and the offender to forfeit 200l. extra.

Sect. 6. "And be it further enacted by the authority aforeſaid, That if any doubt or queſtion ſhall ariſe with reſpect to the ſpecies or quality of the ſaid goods ſeized by virtue of this act, or where the ſame were manufactured, the proof ſhall lie on the owner or owners thereof, and not upon the proſecutor; any law, cuſtom or uſage to the contrary notwithſtanding.

In doubts concerning the ſpecies or quality, &c. of the goods, *Onus probandi* to lie on the owner.

Sect. 7. "And be it further enacted by the authority aforeſaid, That all the goods ſeized by virtue of this act, or any other cauſe of forfeiture, ſhall upon ſeizure thereof be carried to the next cuſtom-houſe, and after condemation in due courſe of law, ſhall not be conſumed or uſed in this kingdom, but ſhall be exported; and ſhall not be ſold or delivered out of ſuch warehouſe, otherwiſe than on condition to be exported, nor until the buyer or buyers ſhall have given ſecurity for the exportation thereof, and obſerving all the regulations and reſtrictions preſcribed for the exportation of *Eaſt India* goods prohibited to be conſumed or uſed in *Great Britain*."

Goods ſeized to be carried to the next cuſtom-houſe, and after condemnation, to be exported.

Sect. 8. "And be it further enacted by the authority aforeſaid, That all the penalties and forfeitures by this act impoſed, ſhall and may be ſued for and recovered in any of his majeſty's courts of record at *Weſtminſter*, or in the court of *Exchequer* at *Edinburgh*, reſpectively, by action, bill, plaint or information, in the name of his majeſty's attorney general, or in the name of his majeſty's advocate in *Scotland*, or in the name or names of ſome officer or officers of the cuſtoms; and that one moiety of every ſuch penalty and forfeiture ſhall be to his majeſty, his heirs and ſucceſſors, and the other moiety thereof to ſuch officer or officers of the cuſtoms who ſhall ſeize, inform or proſecute for the ſame."

Recovery and application of the penalties.

Sect. 9. "And be it further enacted by the authority aforeſaid, That upon every action, bill, plaint or information entered and filed as aforeſaid,

Upon actions entered for pecuniary penalties, a capias in the firſt proceſs to be iſſued;

and the defendants may give bail thereto, &c.

ſaid, for any pecuniary penalty impoſed by this act, a *capias* in the firſt proceſs ſhall and may iſſue, ſpecifying the ſum of the penalty ſued for; and the defendant or defendants ſhall be obliged to give ſufficient bail or ſecurity by natural-born ſubjects or deniſons, to the perſon or perſons to whom ſuch *capias* ſhall be directed, to appear in the court out of which ſuch *capias* ſhall iſſue, at the day of the return of ſuch writ, to anſwer ſuch ſuit or proſecution; and ſhall likewiſe, at the time of ſuch appearance, give ſufficient bail or ſecurity, by ſuch perſons as aforeſaid in the ſaid court, to anſwer and pay all the forfeitures and penalties incurred for ſuch offence or offences, in caſe he, ſhe, or they ſhall be convicted thereof, or to yield his, her or their body or bodies to priſon.

Sect. 10. "And be it further enacted by the authority aforeſaid, That if any action or ſuit ſhall be commenced againſt any perſon or perſons for any thing done in purſuance of this act, the defendant or defendants in ſuch action or ſuit may plead the general iſſue, and give this act, and the ſpecial matter, in evidence, at any trial to be had thereupon; and that the ſame was done in purſuance and by the authority of this act: And if it ſhall appear ſo to have been done, then the jury ſhall find for the defendant or defendants; and if the plaintiff ſhall be nonſuited, or diſcontinue his action after the defendant or defendants ſhall have appeared; or if judgment ſhall be given upon any verdict or demurrer againſt the plaintiff; the defendant or defendants ſhall recover treble coſts, and have the like remedy for the ſame, as defendants have in other caſes by law.

General iſſue.

Treble coſts.

Stat. 4 *Geo.* 3. *c.* 37. [*A. D.* 1764. *Intituled*] "An act for the better eſtabliſhing a manufactory of cambricks and lawns, or goods of the kind uſually known under thoſe denominations, now carrying on at *Winchelſea*, in the county of *Suſſex*; and for improving, regulating, and extending the manufacture of cambricks and lawns, or goods of the kind uſually known under thoſe denominations, in that part of *Great Britain* called *England*."

Preamble.

"Whereas the eſtabliſhing a manufacture of linens in *England*, of the kind uſually known under the denomination of cambricks and *French* lawns, will be of great utility to this kingdom, as well by the employment of a great number of poor, as by preventing the illegal importation of foreign cambricks and *French* lawns: And whereas a manufactury of cambricks and lawns hath been already ſet up at *Winchelſea* in the county of *Suſſex*, and large quantities of ſuch goods have been made there, and may be made in other parts of this kingdom, equal, if not ſuperior, in quality to thoſe made in foreign parts; and many perſons are deſirous of ſubſcribing large ſums towards the ſupport and extenſion of the ſaid manufactury (for the effectual carrying on of which a large fund will be neceſſary), but are apprehenſive that difficulties may ariſe, as well in recovering debts which may grow due to the proprietors of the ſaid manufactury, as in defending ſuits or actions which may be brought or commenced

menced againſt them for any matter or thing relative thereto, as, by law, all the ſeveral proprietors or ſubſcribers to the ſaid manufactury muſt, in ſuch caſes, both ſue and be ſued; implead and be impleaded, by their ſeveral and diſtinct names and deſcriptions; and therefore, for the more eaſily carrying on the manufacture, and avoiding the difficulties aforeſaid, are deſirous of being incorporated and having a common ſeal and name by which they may ſue and be ſued; and many perſons are deſirous of ſubſcribing large ſums thereto, but are deterred from ſo doing, leſt they may thereby become liable, in caſe the ſaid manufactury ſhould not be ſucceſsful, to pay large ſums of money over and above the ſum by them ſubſcribed, to make good the debts to be incurred therefrom; and many perſons who are not now liable to become bankrupts, within the intent and meaning of any of the laws now in force concerning bankrupts, are likewiſe fearful of ſubſcribing money to carry on the ſaid manufacture; as, by becoming ſubſcribers to and part-owners thereof, they may be liable to have commiſſions of bankrupt iſſued againſt them as traders: and whereas ſome doubts have ariſen, whether ſuch cambricks and lawns, ſo made and fabricated in *England*, can, conſiſtent with the laws now in being relating to cambricks and *French* lawns, be legally ſold, diſpoſed of, and uſed in *Great Britain*; may it therefore pleaſe your majeſty that it may be enacted; and Be it enacted by the king's moſt excellent majeſty, by and with the conſent of the lords ſpiritual and temporal and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That it ſhall and may be lawful to and for any perſon or perſons whomſoever, to make and vend, or cauſe to be made and vended, all ſuch linen goods called cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations, as ſhall be made in this kingdom, and ſtamped in the manner herein after directed; and that ſuch lawns or cambricks, or other ſuch like goods ſo made and ſtamped, may be expoſed to ſale, and worn by any perſon or perſons in this kingdom; any law, uſage or cuſtom to the contrary notwithſtanding.

Any perſon may make and ſell cambricks and lawns in this kingdom.

Sect. 2. "And whereas the ſole right and prerogative of granting charters of incorporation (not being ſuch as are repugnant to any law or ſtatute of this kingdom) doth belong to your majeſty; Be it therefore enacted by the authority aforeſaid, That it ſhall and may be lawful to and for his majeſty, his heirs and ſucceſſors, by one charter, indenture, or letters patent, under the great ſeal of *Great Britain*, to declare and grant, That the right honourable the earl *Verney* in the kingdom of *Ireland*, the right honourable *Charles Townſhend*, Sir *George Colebrooke* baronet, Sir *Lawrence Dundas* baronet, *Arnold Neſbitt* eſquire, *Peregrine Cuſt* eſquire, *George Preſcott* eſquire, *Barlow Trecothick* eſquire, *Gilbert Heathcote* eſquire, *Moſes Franks* eſquire, maſter *Edward Bridgen*, maſter *Benjamin Barnett*, maſter *William Grace*, maſter *Thomas Bidwell*, and every other perſon or perſons who ſhall hereafter either in their own right, or as executors, adminiſtrators, ſucceſſors or aſſigns, in right of any other perſon or perſons, become proprietors of, or intereſted in, any part or ſhare of the joint capital ſtock or fund herein after mentioned, ſhall be one diſtinct and ſeparate body politick and corporate, in deed and in

The king may incorporate the perſons herein named (the preſent ſubſcribers) by the name of The Engliſh Linen

Company, with ſuch power of revocation as to his majeſty ſhall ſeem meet; They may chuſe directors, &c.

in name, by the name and ſtile of *The* Engliſh *Linen Company*, or ſuch other name as his majeſty ſhall think proper; and that ſuch corporation ſhall have perpetual ſucceſſion, ſubject to ſuch power of revocation as to his majeſty ſhall ſeem meet; and that ſuch corporation ſhall have power, from time to time, to chuſe ten directors, and all proper officers and ſervants, for the better management of the affairs of the ſaid corporation, in ſuch manner, and under ſuch reſtrictions and qualifications, as are herein after directed, or ſuch as ſhall be preſcribed in that behalf in and by ſuch charter; nevertheleſs the firſt directors of the ſaid corporation ſhall and may be appointed by his majeſty in and by the ſame charter; and that the ſaid firſt directors ſhall continue in their reſpective offices from the time of their appointment by his majeſty, until the firſt *Wedneſday* in *March* next after ſuch appointment; and all ſubſequent directors ſhall continue in their reſpective offices for one year from the time of their reſpective appointments; and in caſe of death, removal, or diſqualification, be ſupplied in ſuch manner as herein after is directed; and that the ſaid corporation ſhall and may have and uſe a common ſeal for the buſineſs only of the ſaid corporation; and ſuch ſeal, from time to time, may break, change, make new or alter, as ſhall be found moſt expedient; and that the ſaid corporation ſhall be able and capable in law, to purchaſe, take, and enjoy, meſſuages, lands, tenements or hereditaments, not exceeding the value of five hundred pounds *per annum*, and to grant, alien, demiſe, or diſpoſe of, the ſame, or any part thereof, at their free wills and pleaſures; and in their corporate name, ſhall be able and capable in law, to ſue and implead, be ſued and impleaded, anſwer and be anſwered, in any court of record, or elſewhere, in all cauſes and actions whatſoever, for, touching or concerning, ſuch corporation, or the manufactury by them carried on as aforeſaid.

and purchaſe lands, &c. not exceeding the value of 500 l. per annum;

may ſue and be ſued;

and may raiſe a capital, not exceeding 100,000 l.

Sect. 3. "And be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for ſuch corporation, when conſtituted, to raiſe a capital joint ſtock, to be applied for the carrying on the ſaid manufacture, and effecting the purpoſes of the ſaid charter, not exceeding one hundred thouſand pounds of lawful money of *Great Britain*, at ſuch times, and in ſuch proportions, as at any general court or courts of ſuch corporation, to be holden purſuant to the directions of this act, or of ſuch charter, ſhall be directed, either by taking ſubſcriptions from particular perſons (being or not being members of ſuch corporation) for advancing money for that purpoſe, according to the orders of ſuch general courts reſpectively, or by calls of money from the members of the ſaid corporation for the time being, or ſuch other methods as the ſaid general courts ſhall think expedient for making up the ſaid capital; and that all and every perſon or perſons, by or from whom any ſubſcriptions ſhall be accepted, or payment made, purſuant to any order or orders of the ſaid general courts, towards raiſing the ſaid capital ſtock, their executors, adminiſtrators and aſſigns ſhall be intitled to a ſhare of the ſaid capital ſtock, in proportion to the money which they ſhall contribute, and to ſuch intereſt thereon, and alſo to ſuch ſhare of the profits and advantages attending the ſaid capital ſtock, and payable at ſuch times, and in ſuch proportions, as ſhall be directed and agreed upon by the

Subſcribers intitled to a ſhare of capital, in proportion to their ſubſcriptions,

ſaid

ſaid corporation at any of their general courts; and ſuch ſubſcriber or ſubſcribers, not being then a member or members of ſuch corporation, upon making their ſeveral ſubſcriptions and payments in manner herein after directed, ſhall be admitted, and are hereby declared to be, members thereof; which ſaid ſubſcriptions, and all other ſubſcriptions to the ſaid capital ſtock or fund of the ſaid corporation, ſhall be diſtinctly and ſeparately entered in a proper book or books to be provided for that purpoſe, and ſigned by the reſpective perſon or perſons making ſuch ſubſcriptions; and the ſums ſubſcribed ſhall be entered in ſuch book or books, in words at length, and alſo in figures, together with the day of the month and year on which ſuch ſubſcriptions ſhall reſpectively be made; and all and every ſuch ſubſcription and ſubſcriptions ſhall be made in the preſence of, and atteſted by, one or more witneſs or witneſſes, who ſhall, by order of the ſaid directors, have the cuſtody of the ſaid book.

and to be members of the corporation.

Subſcriptions to be entered, ſigned, and atteſted.

Sect. 4. "Provided always, and be it enacted by the authority aforeſaid, That it ſhall and may be lawful to and for his majeſty, his heirs and ſucceſſors, by warrant under his or their ſign manual, from time to time, to impower ſuch corporation to enlarge the capital ſtock of ſuch corporation, from time to time, as the affairs of the ſaid corporation ſhall require, on the like terms and conditions with the original capital.

The king may grant power to enlarge the capital.

Sect. 5. "And be it further enacted by the authority aforeſaid, That all and every perſon and perſons who ſhall ſubſcribe any ſum or ſums of money for or towards raiſing ſuch capital ſtock as aforeſaid, ſhall anſwer and pay all ſuch ſum and ſums of money, which he or they ſhall ſo ſubſcribe, unto the directors of the ſaid corporation for the time being, or to the caſhier of the ſaid corporation for the time being, or to ſuch other perſon or perſons who ſhall be authorized to receive the ſame in manner following; that is to ſay, one fourth part (the whole in four equal parts being divided) of every ſuch ſum ſo ſubſcribed, ſhall be paid down at the time of making each ſubſcription; and the remaining three fourth parts thereof at ſuch times, and in ſuch proportions, as any court or courts of directors of the ſaid corporation ſhall think proper to call for or demand the ſame; notice of every ſuch call or demand having been firſt publiſhed in the *London Gazette*, ten days at leaſt before the day limited and appointed for the making of any payment, purſuant to any ſuch call or demand: and if any perſon or perſons, who ſhall have ſo ſubſcribed as aforeſaid, do not pay down one full fourth part of all ſuch ſum or ſums as he or they ſhall ſubſcribe, upon or at the time of his or their ſubſcription, then every ſuch ſubſcription, without ſuch payment, ſhall be utterly void and of none effect; and if any perſon or perſons, who ſhall have ſubſcribed, as aforeſaid, his or their executors, adminiſtrators or aſſigns, having paid, in manner aforeſaid, any part or parts of the ſum or ſums ſo by him or them ſubſcribed, ſhall make default in any of the ſubſequent payments which ſhall be called for or demanded, in manner aforeſaid, for the ſpace of ten days after the time or times in ſuch notice or notices, as aforeſaid, limited and appointed for the payment of ſuch calls reſpectively; then, and in every ſuch caſe, one moiety or half part of the firſt ſum paid by ſuch perſon or perſons, or his or their reſpective ſubſcription,

Subſcribers to pay a fourth at the time of ſubſcribing,

and the remainder at ſuch calls as the directors ſhall appoint.

10 days notice of every call to be publiſhed in the London Gazette.

On neglect of firſt payment, ſubſcription to be void;

and on neglect of ſubſequent payments, one half of the firſt to be forfeited, &c.

ſhall be loſt and forfeited to the ſaid corporation; and the ſhare or intereſt of all and every ſuch perſon or perſons ſo making default of and in the capital ſtock of the ſaid corporation, and the intereſt and profits which he or they would otherwiſe have been intitled to receive therefrom, ſhall be reduced, leſſened, or proportioned, according to the money actually paid upon every ſuch ſubſcription reſpectively, after an abatement or deduction of one moiety or half part of the firſt payment to be forfeited as aforeſaid.

Directors to appoint a houſe in or near London or Weſtminſter to tranſact their buſineſs.

Sect. 6. "And be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for his majeſty, in and by ſuch charter, to impower the court of directors of the ſaid company or corporation for the time being, and ſuch court of directors ſhall and may, from time to time, fix upon and appoint a proper place or houſe in or near the cities of *London* or *Weſtminſter*, for the tranſacting the affairs and buſineſs of the ſaid company; and that the directors in the ſaid charter named, and their ſucceſſors, or any five or more of them, ſhall be and be called a court of directors, and have full power and authority to act as ſuch; and that it ſhall and may be lawful to and for the ſaid court of directors to meet as often as they ſhall think neceſſary or proper; and they are hereby authorized and impowered to nominate and appoint ſuch officers and ſervants, or other perſons, as ſhall be any ways neceſſary to be employed in the management and carrying on the affairs of the ſaid company, and from time to time to diſmiſs ſuch officers and ſervants from their employ, and nominate and appoint new ones in their ſtead or ſteads, or to encreaſe or leſſen their number, as ſuch court of directors ſhall from time to time think proper, and to give ſuch orders and directions for the management of the affairs of the ſaid corporation as they ſhall think proper, and are conſiſtent with the general rules and orders made by the ſaid corporation; and to take, from time to time, any number apprentices to be employed in the manufactury carried on by the ſaid company, upon ſuch terms and conditions, and for ſuch number of years, as to them ſhall ſeem meet; and to affix the common ſeal of the ſaid corporation to a counter-part of the articles of agreement, or indentures of apprenceſhip, made with ſuch apprentices reſpectively, their parents, guardians or other perſons authorized to put out and bind ſuch apprentices reſpectively.

Directors to be a court, and nominate all officers and ſervants;

and to take apprentices.

A general annual court to be held the firſt Wedneſday in March, for electing directors.

Sect. 7. "And be it further enacted by the authority aforeſaid, That there ſhall be one general annual court of the ſaid corporation, held on the firſt *Wedneſday* in *March* in every year, and as many other general courts as ſhall be neceſſary; which ſaid general courts ſhall be held at any houſe or place in the cities of *London* or *Weſtminſter*, which ſhall be appointed by the ſaid court of directors; of which ſaid general court, or any other general courts to be called by any court of directors of the ſaid company, and which general courts ſuch directors are hereby authorized to hold and call as often as ſuch court of directors ſhall think the ſame neceſſary, ten days notice at the leaſt ſhall be given in the *London Gazette*; and that ſaid general court, held on the firſt *Wedneſday* in *March* yearly, ſhall be choſen out of and from the members of the ſaid corporation, by the majority of votes of all the members then preſent.

Sect.

Sect. 8. " And be it further enacted by the authority aforeſaid, That no perſon ſhall be capable of being elected into, or exerciſing the office of, a director of the ſaid corporation but under the qualification following, (that is to ſay) That the directors of the ſaid corporation ſhall ſeverally be poſſeſſed of a ſhare or intereſt in the ſaid ſtock in their own right reſpectively, not leſs than five hundred pounds capital; and that the directors ſhall not continue in their reſpective offices any longer than they ſhall reſpectively continue to be poſſeſſed of the ſaid ſhare and intereſt in the ſaid capital ſtock, in his or their own name and right reſpectively; and that no perſon ſhall be qualified to vote at any general court, who ſhall not then be poſſeſſed of a ſhare or intereſt in the ſaid capital ſtock, to the amount of two hundred pounds at the leaſt in his own right; and that ſuch perſon, who in his own right ſhall be poſſeſſed of five hundred pounds capital ſtock, ſhall have two votes at ſuch general court; and that ſuch perſon who ſhall be poſſeſſed in his own right of one thouſand pounds capital ſtock, ſhall have three votes at ſuch general court; but no perſon ſhall have more than three votes upon any account whatſoever; and if ſuch ſhare or intereſt of any proprietor in the ſaid capital ſtock ſhall be at any time afterwards diminiſhed from the proportion herein before aſcertained, that then the ſame ſhall be no longer a qualification for voting in any general court."

Qualifications of directors, and voters, and the number of votes they may have.

Sect. 9. " And be it further enacted by the authority aforeſaid, That all proprietors ſhall, (if required) before they vote at any court, take an oath in the form which ſhall be approved of by a general court, to be adminiſtered to them by one of the directors (who are hereby authorized and impowered to adminiſter the ſame, or to direct ſuch oath to be adminiſtered by any other perſon or perſons in his or their preſence) declaring their property, ſhare, or intereſt in the capital ſtock of the ſaid corporation, and the *quantum* thereof, and that the ſame, or any part thereof, is not in truſt for any other perſon or perſons, and that no perſon ſhall be admitted to vote at any ſuch court who ſhall refuſe to take ſuch oath; and all officers and ſervants of the ſaid corporation ſhall, if required by the court of directors, before they enter on their reſpective offices, likewiſe take an oath in the form which for that purpoſe ſhall be approved by a general court of the ſaid corporation, to be adminiſtered by the directors of the ſaid corporation, or any one of them, for the due and faithful diſcharge of their reſpective offices; which oath ſuch directors, or any one of them, are hereby authorized and impowered to adminiſter, or direct the ſame to be adminiſtered by any other perſon or perſons in his or their preſence; and in caſe any ſuch officer or ſervant ſhall refuſe or neglect to take ſuch oath for the ſpace of ten days after he or they ſhall be choſen or appointed to any ſuch office or offices as aforeſaid, if required, ſuch choice or appointment ſhall be void, and a new election or appointment made.

Members voting, to ſwear to their qualifications, if required.

Officers, &c. to be ſworn according to the form approved by a general court;

refuſing or neglecting to take ſuch oath for 10 days, election void.

Sect. 10. " And be it further enacted by the authority aforeſaid, That the court of directors of the ſaid corporation for the time being ſhall be obliged, upon demand made to them by any ten or more members of the ſaid corporation, who ſhall in the whole, or together, be poſſeſſed of not leſs

General courts to be called on demand of certain ſubſcribers;

leſs than five thouſand pounds in the capital or joint ſtock of the ſaid corporation, ſuch demand being made in writing, and ſigned by the members demanding the ſame, and delivered at a court of directors to any one member of ſuch court then preſent, to call a general court; and upon ſuch court of directors refuſing, or for the ſpace of ten days neglecting ſo to do, the members demanding ſuch court ſhall be at liberty to call and hold ſuch general court, upon the like notice as ſhould have been given by the ſaid court of directors; and any general court, either called by the court of directors of the ſaid corporation, or by any of the members or proprietors of the ſaid corporation, in manner aforeſaid, ſhall have full power and authority, and are hereby fully authorized and impowered to remove or diſplace any director, for miſbehaviour, breach of truſt, or other juſt cauſe, and to elect a new director or directors in his or their ſtead, in the ſame manner as if he or they was or were dead, or had diſqualified himſelf or themſelves, or his or their office, truſt or employ was in any other manner become void.

on refuſal, they may call ſuch court themſelves.

General court may diſplace directors.

Sect. 11. "And be it further enacted by the authority aforeſaid, That no member or members of the ſaid corporation, or any perſon or perſons having the conduct or direction of the ſaid manufactury, his or their heirs, executors or adminiſtrators, lands or hereditaments, goods, chattels or effects, other than his or their ſhare or ſhares in the capital ſtock and effects of the ſaid corporation, ſhall be liable or ſubject to the payment of any debt or debts contracted by or on account of the ſaid corporation, or the manufactury carried on by the ſaid corporation, in any other manner than is herein after directed and provided.

No member liable to any debt of the corporation, further than his ſhare in the capital.

Sect. 12. "Provided always, and be it enacted by the authority aforeſaid, That if the ſum total of all the debts which the ſaid corporation ſhall owe at any one time to any perſon or perſons, bodies politick or corporate, ſhall exceed the value of the principal or capital ſtock and effects of the ſaid company or corporation, which at ſuch time ſhall be and remain to the ſaid corporation undivided; or if the ſaid corporation, by any dividend or dividends whatſoever, either in the name of intereſt, or otherwiſe, to be made amongſt themſelves, or in their private or perſonal capacities, ſhall reduce or leſſen their joint ſtock, principal or capital, ſo that the value of their joint ſtock, principal or capital ſhall not be ſufficient to anſwer their juſt debts then remaining unpaid; in every ſuch caſe the particular members of the ſaid corporation, and every of them reſpectively, who in their private or perſonal capacities ſhall receive any ſhare or dividend of the capital or ſtock of the ſaid corporation, by which the capital ſtock of the ſaid corporation ſhall be ſo reduced or leſſened, ſhall be ſeverally liable, and they are hereby made liable, ſo far as their reſpective ſhares ſo by them reſpectively received upon ſuch dividend or dividends ſhall extend, to pay and ſatisfy the debts which ſhall remain due and unpaid by the ſaid company or corporation; and the perſon or perſons, bodies politick or corporate, to whom ſuch debts ſhall be due and owing, ſhall and may ſue for and recover the ſame; any thing in this act contained to the contrary thereof in any wiſe notwithſtanding.

If the corporate debts ſhall exceed the value of the capital undivided,

or if they reduce their capital, ſo that their ſtock ſhall not be ſufficient to pay their debts;

Perſons receiving any dividend by which the capital ſhall be reduced, are to be perſonally liable to make good ſuch deficiency, ſo far as the dividends they ſhall have received ſhall extend.

Sect.

Sect. 13. "And be it further enacted by the authority aforeſaid, That no perſon being or becoming a member of, or ſubſcriber to the ſaid corporation, for carrying on the ſaid manufacture in purſuance of this act, ſhall, by means of becoming a member of, or ſuſcriber to, or in reſpect of his ſhare or intereſt in the capital ſtock of the ſaid corporation, be, or be adjudged liable to be a bankrupt, within the intent or meaning of all or any of the ſtatutes made againſt or concerning bankrupts; nor ſhall the capital ſtock or effects of the ſaid corporation, or the ſhare or intereſt of any particular member therein, be liable to any foreign attachment whatſoever; any law, uſage or cuſtom to the contrary notwithſtanding." Members not liable to bankruptcy, nor the effects of the company, or any member's ſhare, liable to foreign attachment.

Sect. 14. "And be it further enacted by the authority aforeſaid, That the particular ſhare of every member in the capital ſtock or fund of the ſaid corporation, and all lands, tenements, hereditaments, and eſtates whatſoever, held by or in truſt for them or their ſucceſſors, ſhall, from time to time, be aſſignable, transferrable and deviſeable; but no member or members of the ſaid corporation ſhall be at liberty to ſell or aſſign his or their ſhare or intereſt therein, till after the expiration of ſeven years, from the time of the conſtitution of the ſaid corporation; but if ſuch member or members ſhall die, or become bankrupt, then the ſhare and intereſt of ſuch member or members ſo dying, or becoming bankrupt, of and in the capital ſtock of the ſaid corporation, ſhall and may be aſſigned and tranſferred by his or their executors or adminiſtrators, aſſignee or aſſignees, at any time within the ſaid term of ſeven years, in like manner as the ſame might have been done, had the ſaid term of ſeven years been fully expired; and all the right, title, intereſt, claim and demand of each and every particular member of the ſaid corporation, in or to the capital ſtock and effects whatſoever of the ſaid corporation, and the gains and increaſe thereof, ſhall be, and be adjudged, taken, accepted, in conſtruction of law, by all judges, and in all courts of law and juſtice, and in all places whatſoever, to be a perſonal and not a real eſtate, and ſhall go to the executors or adminiſtators, or other legal repreſentatives intitled to the perſonal eſtate of the perſon or perſons dying poſſeſſed thereof, or intitled thereunto, and not to the heirs of ſuch perſon or perſons; any law, ſtatute, uſage or cuſtom whatſoever to the contrary notwithſtanding." Shares to be aſſignable; but not till ſeven years from the conſtitution of the corporation, unleſs in caſe of death or bankruptcy. members ſhares, &c. to be perſonal eſtates.

Sect. 15. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall forge or counterfeit the common ſeal of the ſaid corporation, to be eſtabliſhed in purſuance of this act, or ſhall forge, counterfeit or alter any deed, bill, bond or obligation, under the common ſeal of the ſaid corporation, or ſhall offer to diſpoſe of, or pay away any ſuch forged, counterfeited or altered bill, bond or obligation, knowing the ſame to be ſuch, or ſhall demand any money therein mentioned or pretended to be due thereon, or on any part thereof, of and from the ſaid corporation, or any members, officers or ſervants thereof, knowing ſuch bill, bond or obligation to be forged, counterfeited or altered, with intent to defraud the ſaid corporation, or their ſucceſſors, or any other perſon or perſons whomſoever; every perſon ſo offending, and being Forging the ſeal, &c. of the corporation, felony.

convicted thereof in due form of law, ſhall be judged guilty of felony, and ſhall ſuffer as in caſes of felony, without benefit of clergy."

Breaking into a ſhop, &c. with intent to ſteal or deſtroy, &c. any material or implements declared to be felony.

Sect. 16. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall by day or night break into any houſe, ſhop, cellar, vault or other place or building, or by force enter into any houſe, ſhop, cellar, vault, or other place or building, with intent to ſteal, cut or deſtroy any linen yarn, or any linen cloth, or any manufacture of linen yarn belonging to any manufactury, or the looms, tools or implements uſed therein; or ſhall wilfully or maliciouſly cut in pieces or deſtroy any ſuch goods, either when expoſed to bleach or dry; every ſuch offender, being thereof lawfully convicted, ſhall be judged guilty of felony, and ſhall ſuffer as in caſes of felony, without benefit of clergy."

Cambricks and lawns made in England after 10 day of May 1765, to be ſealed at both ends.

Sect. 17. "And be it further enacted by the authority aforeſaid, That all cambricks and lawns, or goods of the kind uſually known under either of thoſe denominations, which from and after the tenth day of *May*, now next enſuing, ſhall be wove or fabricated in *England*, or the principality of *Wales*, ſhall be marked or ſealed at each end of every piece with ſuch mark or ſeal, and by ſuch officer or officers, as the commiſſioners of exciſe in *England* ſhall direct or appoint for that purpoſe."

Commiſſioners of exciſe, upon requeſt, to provide ſeals, and appoint officers to mark the goods;

Sect. 18. "And for the greater eaſe and convenience of the perſon or perſons, who ſhall make, weave, or fabricate any ſuch cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations; be it enacted by the authority aforeſaid, That it ſhall and may be lawful to and for the commiſſioners of exciſe for the time being, or the major part of them, from time to time, upon requeſt made to them by any ſuch perſon or perſons, and at the expence of ſuch perſon or perſons, to provide ſuch ſeal or marks as to them the ſaid commiſſioners, or the major part of them, ſhall ſeem proper; and to direct or appoint one or more ſupervifor, or other officer or officers of the exciſe, of the diſtrict or diviſion in which any ſuch manufacture ſhall be carried on, to ſeal or make each and every piece of ſuch cambrick or lawn, or goods of the kind uſually known under either of thoſe denominations, which ſhall be made, wove, or fabricated, by ſuch perſon or perſons applying as aforeſaid, with ſuch ſeal or mark, or ſeals or marks, in manner herein after mentioned and directed; and the officer or officers of exciſe, who ſhall be ſo appointed to mark or ſeal ſuch goods, ſhall by the fabricator, maker, weaver or proprietor of ſuch goods, be paid for every piece of ſuch goods, which he or they ſhall mark or ſeal in purſuance of this act, before the ſame ſhall be cut or taken out of the loom, ſuch ſum as the commiſſioners of exciſe for the time being, or the major part of them, ſhall direct and appoint."

who are to be paid for marking &c. ſuch goods before taken out of the loom.

Manufacturer to give notice to officer of the finiſhing of every piece, who is to mark the ends before taken out of the loom.

Sect. 19. "And be it further enacted by the authority aforeſaid, That all and every perſon and perſons who ſhall weave, fabricate, or make any ſuch cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations, ſhall, before the ſame ſhall be taken or cut out of the loom, give notice in writing, of the finiſhing of every or any piece or pieces of ſuch goods, to ſuch ſupervifor or other officer as aforeſaid,

ſaid, who, before any ſuch piece of goods ſhall be cut out of the loom, ſhall mark or ſeal both the ends of every ſuch piece of goods, with ſuch ſtamp, mark or ſeal, which ſhall be provided and appointed for that purpoſe, in manner aforeſaid; upon pain that every perſon who ſhall weave, make or fabricate ſuch cambricks or lawns, or goods of the kind uſually known by or under thoſe denominations, and ſhall cut or take any piece of ſuch goods out of the loom, after the ſame ſhall have been finiſhed, or permit the ſame to be done, without having firſt given ſuch notice in writing, and having the ends thereof marked or ſealed as aforeſaid, ſhall, for every ſuch offence, forfeit five pounds; and the goods ſo cut out of the loom without ſuch notice being given, and ſuch marks or ſeals being ſet thereon, in manner herein before directed, ſhall be forfeited, and ſhall and may be ſeized by any officer or officers of the cuſtoms or exciſe."

Penalty on taking any piece out of the loom without giving ſuch notice, and having the ends marked, 5l. and loſs of the goods.

Sect. 20. "And be it further enacted by the authority aforeſaid, That every ſuperviſor or other officer of exciſe, of the diſtrict in which any ſuch manufacture of cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations, ſhall be carried on, who ſhall be ſo as aforeſaid appointed by the commiſſioners of exciſe, or the major part of them, to mark or ſeal ſuch goods, upon reaſonable notice given to him or them by any perſon or perſons who ſhall make, weave or fabricate any ſuch goods, that any piece of ſuch goods is finiſhed, ſhall forthwith, or as ſoon as conveniently may be conſiſtent with other the duty and buſineſs of his office, in manner herein before directed, mark or ſeal both ends of every ſuch piece of goods with ſuch mark or ſeal which ſhall be ſo as aforeſaid appointed and provided for that purpoſe, and alſo fix or ſet a diſtinct and ſeparate number to every piece of ſuch goods before the ſame ſhall be taken out of the loom; and alſo make a juſt and true entry in writing, in proper books to be provided for that purpoſe at the expence of the manufacturer of ſuch goods, of the number ſet to each piece of goods, and of the number of yards which each piece of ſuch goods ſhall contain in length, and alſo of the number of threads contained in the warp of each piece of ſuch goods; upon pain that every ſuperviſor, or other officer or officers ſo appointed as aforeſaid, who ſhall, upon reaſonable notice given as aforeſaid of the finiſhing of any piece of ſuch goods, neglect or refuſe to mark or ſeal the beginning and end of every piece of ſuch goods in manner herein before directed, or to fix or ſet a diſtinct and ſeparate number on each piece of ſuch goods, or to make a true and juſt entry in manner aforeſaid, of the number ſet or affixed to each piece of ſuch goods, and of the number of yards which each piece thereof ſhall contain in length, and alſo the number of threads contained in the warp of each piece of ſuch goods, ſhall, for every ſuch refuſal or neglect, forfeit the ſum of ten pounds."

Officer, on notice of the finiſhing any pieces of ſuch goods, forthwith to mark the beginnings and ends, and ſet a number on each piece before taken out of the loom;

and to make a true entry of the numbers, lengths, and the number of threads in the warp of each piece on forfeiture of 10l.

Sect. 21. "And be it further enacted by the authority aforeſaid, That if any ſuch ſuperviſor, or other officer or officers of the exciſe, who ſhall be ſo appointed to mark or ſeal ſuch cambricks or lawns, or who ſhall have the cuſtody of any mark or ſeal which ſhall be ſo provided and appointed to mark or ſeal ſuch goods, ſhall therewith mark or ſeal any cambricks or lawns, or goods of the kind uſually known by or under

Officers marking cambricks or lawns not made in England,

either of thoſe denominations, which ſhall not have been made, wove and fabricated in *England*, or the principality of *Wales*, or ſhall knowingly permit it to be done, or ſhall mark or ſeal any piece of ſuch goods after the ſame ſhall have been taken out of the loom, every ſuch ſuperviſor, or other officer or officers ſo marking or ſealing any ſuch cambricks or lawns, or goods of the kind uſually known under either of thoſe denominations, or wilfully or knowingly permitting the ſame to be done, contrary to the true intent and meaning of this act, ſhall forfeit the ſum of fifty pounds for every piece of ſuch goods which he or they ſhall ſo mark or ſeal, or permit or ſuffer to be marked or ſealed, contrary to the true intent and meaning of this act, to be ſued for and recovered in any of his majeſty's courts of record at *Weſtminſter*, by bill, plaint or information, by any perſon or perſons who will inform or ſue for the ſame; and ſuch ſuperviſor, or other officer or officers, upon being convicted of any or either of the offences aforeſaid, ſhall loſe his or their office or offices and employments under the exciſe, and is and are hereby declared and rendered ever after incapable of having, uſing or enjoying any office or place of truſt under his majeſty, his heirs and ſucceſſors."

or marking ſuch goods after taken out of the loom, to forfeit 50l. and be incapacitated.

Penalty on bribing officers.

Sect. 22. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall, by bribery, fraud, covin deceit or impoſition, or in any manner whatſoever, prevail on or procure any officer or officers of the exciſe, or other perſon who ſhall be appointed to mark or ſeal any cambricks or lawns, or who ſhall have the cuſtody of any ſeal, ſtamp or mark, provided and appointed for that purpoſe, in purſuance of this act, to ſet or affix ſuch mark, ſeal or ſtamp, to any piece or pieces of cambrick or lawn, or of goods of the kind uſually known under either of thoſe denominations, which ſhall not have been actually and *bona fide* made, wove or fabricated, in that part of *Great Britain* called *England*, or principality of *Wales*, or after the ſame ſhall have been cut or taken out of the loom, contrary to the true intent and meaning of this act; all and every ſuch offender and offenders, and his and their aiders, abetters, and aſſiſtants (being thereof lawfully convicted) ſhall, for every ſuch offence, forfeit and loſe the ſum of one hundred pounds, and be adjudged to ſtand in the pillory two hours; and if any perſon or perſons ſhall give pay or ſecure, or offer to give, pay or ſecure, to any ſuch officer or officers, or other perſon as aforeſaid, any bribe, recompence or reward of any kind whatſoever, in order to corrupt, perſuade or prevail on ſuch officer or officers, or other perſon, to ſet or affix ſuch mark, ſtamp or ſeal, as aforeſaid, to any piece or pieces of cambrick, lawn or other goods directed by this act to be ſtamped or ſealed, which ſhall not have been actually and *bona fide* made, wove and fabricated, in that part of *Great Britain* called *England*, or the principality, of *Wales*, or after the ſame ſhall have been taken out of the loom, ſuch perſon or perſons ſo offending ſhall, for every ſuch offence, forfeit and loſe the ſum of fifty pounds."

Officers to tranſmit to the commiſſioners of ex-

Sect. 23. "And be it further enacted by the authority aforeſaid, That all and every ſuperviſor or other officer or officers of exciſe, who ſhall in manner aforeſaid be appointed to mark or ſeal any cambricks, lawns, or ſuch

ſuch kind of goods, in purſuance of this act, ſhall yearly and every year (while ſuch officer or officers ſhall have the cuſtody of any ſuch ſeal provided or appointed for that purpoſe in manner aforeſaid) in the month of *June*, tranſmit and ſend to the commiſſioners of exciſe in *London*, a full, true and juſt account in writting of all and every piece and pieces of ſuch goods, which he or they ſhall ſeal or ſtamp in purſuance of this act; and alſo a true copy of all and every entry or entries of any kind whatſoever, which he or they ſhall make in any ſuch book or books provided for that purpoſe in any wiſe relating thereto, for or during the twelve calendar months next preceding the ſaid month of *June*; diſtinguiſhing in ſuch accounts the ſeveral manufacturers or proprietors, if there ſhall be more than one ſuch in ſuch officer's diſtrict, who ſhall have made or be owners of ſuch goods; upon pain of being diſmiſſed from his or their employ as an officer or officers of exciſe; and all and every ſuch officer or officers having the cuſtody of any ſuch ſtamp, mark or ſeal as aforeſaid, his or their executors or adminiſtrators, or ſuch other perſon or perſons in whoſe cuſtody or power the ſame ſhall fall or come by the death of ſuch officer or officers, or in any other manner, ſhall, upon demand or order from or by the commiſſioners of exciſe, or the major part of them, deliver up to ſuch commiſſioners, or ſuch perſon or perſons as they ſhall appoint to receive the ſame, all and every ſuch ſeal or ſeals which ſhall have been delivered to ſuch officer or officers, or by any other means come or fallen into the hands, cuſtody or power of ſuch officer or officers or other perſons whatſoever; upon pain that any ſuch officer or officers, or other perſon or perſons, refuſing or neglecting ſo to do upon any ſuch order or demand as aforeſaid, ſhall forfeit and loſe the ſum of two hundred pounds, to be recovered and applied in like manner with the other penalties inflicted by this act, by any perſon or perſons who will inform or ſue for the ſame."

Exciſe an annual account of all goods they ſhall ſtamp, and a copy of all entries relating thereto.

Officers, &c. to deliver up ſeals, &c. to commiſſioners of exciſe, on demand, on a penalty of 200l.

Sect. 24. "And be it further enacted by the authority aforeſaid, That if any cambrick or lawn, or goods of the kind uſually known by or under either of thoſe denominations, made, wove or fabricated in *England*, or the principality of *Wales*, after the ſaid tenth day of *May* next enſuing, ſhall be found in any houſe, ſhop, warehouſe, room, cellar, vault, or other place, in *England*, or principality of *Wales*, without being marked or ſealed at each end of every whole and entire piece, and at one end of every remnant of ſuch cambricks or lawns, or goods of the kind uſually known by or under thoſe denominations, all ſuch goods ſhall be forfeited, and ſhall and may be ſeized by any ſuperviſor or other officer or officers of the cuſtoms or exciſe, and ſuch ſuperviſor or other officer or officers is and are hereby indemnified for ſeizing ſuch goods; and all ſuch goods ſo ſeized ſhall and may be depoſited in the cuſtomhouſe warehouſe, or in the exciſe office next to the place where the ſame ſhall be ſeized, and after condemnation thereof by due courſe of law, ſhall be publickly ſold to the beſt bidder; and that one moiety of the produce ariſing by the ſale thereof, after deducting the charges and expences attending the condemnation and ſale of ſuch goods, ſhall be to the uſe of his majeſty, his heirs and ſucceſſors, and

Cambricks and lawns made in England after 10 May 1764, found unſtampt, may be ſeized.

Perſons expoſing to ſale, or having in their cuſtody for ſale, ſuch goods unſtamped, to forfeit 200l.

the other moiety thereof to ſuch ſupervifor or other officer or officers as aforeſaid, who ſhall ſeize or ſue for the ſame; and all and every perſon or perſons who ſhall ſell or expoſe to ſale, or have in his or their cuſtody for that purpoſe, any cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations, made and fabricated in *England*, or the principality of *Wales*, and not marked or ſealed at both ends of every entire piece, and at one end of every remnant of ſuch goods, in manner by this act directed, ſhall for every ſuch offence, forfeit the ſum of two hundred pounds, to be recovered and divided in manner herein after directed.

Goods condemned by virtue of this act, not to be worn here, but ſold for exportation, and the buyers to give ſecurity.

Sect. 25. "And be it further enacted by the authority aforeſaid, That no cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations, which after the ſaid tenth day of *May* one thouſand ſeven hundred and ſixty-four, ſhall be ſeized and condemned by virtue of this act, ſhall be conſumed or worn in this kingdom, but ſhall be exported, and not ſold otherwiſe than on condition to be exported, and ſhall not be delivered out of the warehouſe where the ſame ſhall have been ſecured, until ſufficient ſecurity by bond, to be approved of by the collector of the port from whence ſuch goods ſhall be exported, in the penalty of double the value of the goods to be given by the exporter thereof, that the ſame, and every part thereof, ſhall be exported, and not relanded in any part of *Great Britain*.

Perſons counterfeiting the ſeal, &c. or ſelling goods with a counterfeit ſeal, &c. guilty of felony.

Sect. 26. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall, at any time or times hereafter, forge or or counterfeit any ſtamp, mark or ſeal, to reſemble any ſtamp, mark or ſeal, which ſhall be provided or uſed in purſuance of this act, or ſhall forge, reſemble or counterfeit the impreſſion of any ſuch mark, ſtamp or ſeal, upon any goods required by this act to be ſtamped, marked or ſealed, or ſhall import or bring into *England* any foreign cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations, having any ſuch counterfeit mark, ſeal, ſtamp or impreſſion thereon, or ſell or expoſe to ſale any cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations, with ſuch counterfeit mark, ſeal, ſtamp or impreſſion thereon, knowing ſuch ſtamp, mark or ſeal to be counterfeited; every ſuch perſon ſo offending, being thereof lawfully convicted, ſhall be judged guilty of felony, and ſhall ſuffer as in caſes of felony, without benefit of clergy.

Cambricks or lawns made or begun in England before commencement of this act, to be ſealed.

Sect. 27. "Provided always, and be it enacted by the authority aforeſaid, That it ſhall and may be lawful to and for the commiſſioners of exciſe in *England* for the time being, or the major part of them, at any time within two months next after the commencement of this act, to order and direct all ſuch cambricks and lawns, or goods of the kind uſually know by or under either of thoſe denomiations, which ſhall have been made, or begun to be made, wove and fabricated in *England* or *Wales*, at any time before the commencement of this act, to be ſealed or marked at both ends of every piece thereof with ſuch mark or ſeal which ſhall be provided and appointed as aforeſaid, notwithſtanding the ſame ſhall have been

been taken out of the loom (proof being firſt made upon oath to the ſatisfaction of the ſaid commiſſioners, that all ſuch goods were really and *bona fide* made, or begun to be made, wove and fabricated, in *England*, or *Wales*, before the commencement of this act), which goods ſo marked or ſealed, and numbered, in purſuance of ſuch directions, ſhall and may be ſold, diſpoſed of, and uſed, in like manner as if the ſame had been made or wrought after the commencement of this act, and all the directions thereof fully complied with; any thing in this act contained to the contrary thereof, in any wiſe notwithſtanding; and the ſuperviſor, or other officer or officers of the exciſe, who ſhall be directed to mark or ſeal and number ſuch goods, ſhall make the like entry of the number of yards in length, and number of threads contained in the warp of each piece of ſuch goods, and the number ſet thereon, in like manner and under the like penalties as herein before directed, with reſpect to cambricks or lawns made after the commencement of this act.

Seizures and penalties, how to be recovered and applied.

Sect. 28. "And be it further enacted by the authority aforeſaid, That all ſuch goods which ſhall be ſeized or condemned in purſuance of this act, and all pecuniary penalties and forfeitures by this act inflicted, ſhall and may be ſued for, proſecuted and recovered in any of his majeſty's courts of record at *Weſtminſter*, by action of debt, bill, plaint or information, in the name of his majeſty's attorney general, or in the name or names of any ſuch ſuperviſor or other officer or officers of the cuſtoms or exciſe as aforeſaid, except in ſuch caſes where it is otherwiſe provided by this act; and that one moiety of the clear produce ariſing from the ſale of all ſuch goods, and of all the pecuniary penalties and forfeitures inflicted by this act, after all charges deducted, ſhall be to his majeſty, his heirs and ſucceſſors, and the other moiety thereof to the officer or officers, or ſuch other perſon who, purſuant to the directions of this act, ſhall ſeize, inform or proſecute for the ſame.

A *Capias* to iſſue for the penalties in the firſt proceſs.

Defendants to give bail.

Sect. 29. "And be it further enacted by the authority aforeſaid, That upon every action, bill, plaint or information, entered or filed as aforeſaid, for any pecuniary penalty impoſed by this act, a *Capias* in the firſt proceſs ſhall and may iſſue, ſpecifying the ſum of the penalty ſued for; and the defendant or defendants ſhall be obliged to give ſufficient bail or ſecurity by natural-born ſubjects, perſons naturalized, or denizens, to the perſon or perſons to whom ſuch *Capias* ſhall be directed, to appear in the court out of which ſuch *Capias* ſhall iſſue, at the day of the return of ſuch writ, to anſwer ſuch ſuit or proſecution; and ſhall likewiſe, at the time of ſuch appearance, give ſufficient bail or ſecurity, by ſuch perſons as aforeſaid, in the ſaid court, to anſwer and pay all the forfeitures and penalties incurred for ſuch offence or offences, in caſe he, ſhe or they ſhall be convicted thereof, or to yield his, her or their body or bodies to priſon.

Limitation of actions.

Sect. 30. And be further enacted by the authority aforeſaid, That if any action or ſuit ſhall be commenced againſt any perſon or perſons, for recovery of any of the pecuniary penalties inflicted by this act, ſuch action or ſuit ſhall be brought or commenced within twelve calendar months next after the cauſe of action ſhall ariſe, and not afterwards, and ſhall be

laid.

laid and brought in the county or place where the cauſe of action ſhall ariſe, and not elſewhere; and the defendant or defendants in ſuch action or ſuit ſhall and may plead the general iſſue, and give this act, and the ſpecial matter in evidence, at any trial to be had thereon, and that the ſame was done by the authority of this act: and if it ſhall appear to have been ſo done, then the jury ſhall find for the defendant or defendants; and if the plaintiff or plaintiffs ſhall become nonſuited, or diſcontinue his, her or their action or ſuit, after the defendant or defendants ſhall have appeared; or if, upon verdict or demurrer, judgment ſhall be given againſt the plaintiff or plaintiffs; the defendant or defendants ſhall recover treble coſts, and have ſuch remedy for the ſame as any defendant or defendants hath or have in other caſes by law.

General iſſue.

Treble coſts.

Onus probandi to lie on the claimer.

Sect. 31. "And be it further enacted by the authority aforeſaid, That if any cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations, ſhall be ſeized by virtue or in purſuance of this or any other act now in force; or if any action ſhall be brought by the owner or claimer of ſuch goods, againſt any officer of the cuſtoms or exciſe, or any other perſon, for any thing done in purſuance of this or any other act now in force, and any doubt or queſtion ſhall ariſe where ſuch goods were manufactured, the proof thereof ſhall lie upon the owner or claimer of ſuch goods, and not on the perſon who ſeized the ſame, or againſt whom ſuch action ſhall be brought; any law, uſage or cuſtom to the contrary notwithſtanding.

Act not to extend to Scotland or Ireland.

Sect. 32. "Provided always, and be it enacted, That nothing in this act contained ſhall be extended, or conſtrued, deemed or taken to prevent the ſale of, or lay any kind of reſtriction on, any linen goods whatſoever, really and *bona fide* made, wove or fabricated in *Scotland* or *Ireland*; but that all ſuch goods ſhall and may be lawfully ſold and uſed in *England*, in the ſame manner as if this act had not been made.

Publick act.

Sect. 33. "And be it further enacted by the authority aforeſaid, That this act ſhall be adjudged, deemed and taken to be a public act, and be judicially taken notice of as ſuch, by all judges, juſtices, and other perſons whatſoever, without ſpecially pleading the ſame."

Stat. 7 *Geo.* 3. *c.* 43. [*A. D.* 1767. *Intituled*] "An act to amend and enforce the acts of the eighteenth, twenty-firſt, and thirty-ſecond years of the reign of his late majeſty king *George* the ſecond, for the more effectually preventing the fraudulent Importation and wearing of cambricks and *French* lawns.

Preamble, reciting acts 18 Geo. 2.

"Whereas an act paſſed in the eighteenth year of the reign of his late majeſty king *George* the ſecond, intituled, "An act for prohibiting the wearing and importation of cambricks and *French* lawns;" and alſo one other act paſſed in the twenty-firſt year of the reign of his ſaid majeſty, intituled, "An act for explaining, amending, and enforcing an act made in the eighteenth year of the reign of his preſent majeſty," intituled, "An act for prohibiting the wearing and importation of cambricks and *French* lawns;"

21 Geo. 2.

lawns;" and another act made in the thirty-ſecond year of the reign of his ſaid late majeſty king *George* the ſecond, intituled, "An act for the more effectual preventing the fraudulent importation of cambricks and *French* lawns," have been found ineffectual: May it therefore pleaſe your majeſty, that it may be enacted; and Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the firſt day of *July* one thouſand ſeven hundred and ſixty-ſeven, no cambrick or *French* lawn ſhall be imported into any part of *Great Britain*, except into the port of *London* only.

and 32 Geo. 2.

No cambrick or French lawn to be imported into any part of Great Britain, except into the port of London. After 1 July 1767; and in Britiſh ſhips navigated according to law;

Sect. 2. "And be it further enacted by the authority aforeſaid, That no ſuch cambrick or *French* lawn ſhall be allowed to be imported into the port of *London* from any parts beyond the ſeas, except in *Britiſh* ſhips navigated according to law; and except notice be firſt given to the commiſſioners of his majeſty's cuſtoms of the ſpecies, and quantity, and marks of the packages, of ſuch cambricks and *French* lawns, and the name of the ſhip in which the ſame are intended to be imported; and a licence given under the hands of the commiſſioners of his majeſty's cuſtoms in *England* for the time being, or any three of them, for the landing thereof, within thirty days from the date of ſuch licence; which licence they are hereby authorized and required to grant without any fee or reward, or any other charge to the perſon demanding the ſame: And if any cambricks or *French* lawns ſhall be imported into *Great Britain* contrary to the true intention of this act, or without ſuch licence as is herein before directed, ſuch goods, with the package containing the ſame, together with the ſhip or veſſel in which the ſame ſhall be imported, ſhall be forfeited and loſt, and ſhall and may be ſeized and proſecuted as herein after mentioned; any law, cuſtom or uſage to the contrary notwithſtanding.

Notice thereof alſo being firſt given to the commiſſioners of the cuſtoms, and a licence obtained for the landing; otherwiſe they are liable to forfeiture, together with the veſſel.

Sect. 3. "Provided always, That no ſuch licence ſhall be granted for the importation or landing of any cambricks or *French* lawns in any other package, or in any leſs quantity, than is directed and allowed by the laſt recited act of the thirty-ſecond year of the reign of his late majeſty king *George* the ſecond.

Licence to be reſtrained to the package, and quantity, preſcribed by act 32 G. 2.

Sect. 4. "And it is hereby further enacted, That ſuch licence ſhall be produced and delivered up by the maſter or perſon taking charge of the ſhip wherein ſuch cambricks or *French* lawns ſhall be imported, together with the marks, numbers, and contents of each package, endorſed on the the back thereof, to the collector and comptroller of the cuſtoms, at the time of entering and reporting ſuch ſhip, on the forfeiture of one hundred pounds; and ſuch cambricks and *French* lawns ſhall, upon landing, be warehouſed under the like rules, regulations, and reſtrictions; and ſhall not be afterwards delivered out of ſuch warehouſe, but on condition to be exported to ſome of the *Britiſh* colonies or plantations in *America*, under the like ſecurities and reſtrictions as are expreſſed and directed in the ſaid laſt recited act of the thirty-ſecond year of the reign of king *George* the ſecond, and upon payment of the ſame duties as they are now liable to by law.

and to be delivered up by the maſter, &c. at the time of entering and reporting the veſſels, and the goods to be warehouſed; and delivered out for exportation only.

Sect.

No cambrick or lawn to be imported from Ireland, till the importation of cambricks and French lawns into that kingdom be prohibited by law.

Sect. 5. "And be it further enacted by the authority aforeſaid, That from and after the twenty-fourth day of *June* one thouſand ſeven hundred and ſixty-eight, no cambrick or lawn whatſoever ſhall be imported from the kingdom of *Ireland*, into any part of *Great Britain*, until the importation of cambricks and *French* lawns into the kingdom of *Ireland* ſhall be prohibited by law; upon pain of forfeiting the ſaid goods, and the further penal ſum of five pounds for every piece of cambrick or lawn ſo imported."

Veſſels from foreign parts found hovering on the coaſt, &c. having on board any cambrick or French lawns, not licenſed,

Sect. 6. "And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *July* one thouſand ſeven hundred and ſixty-ſeven, where any ſhip or veſſel whatſoever coming or arriving from foreign parts, and having on board any cambrick or *French* lawns, without ſuch licence as is herein before directed, ſhall be found at anchor, or hovering within the limits of any of the ports of *Great Britain*, or within two leagues of the ſhore, or ſhall be diſcovered to have been within the limits of any port, and not proceeding on her voyage, wind and weather permitting, (unleſs in caſe of unavoidable neceſſity and diſtreſs of weather, of which neceſſity and diſtreſs the maſter, purſer, or other perſon, having or taking the charge or command of ſuch ſhip or veſſel, ſhall give notice to, and make proof of before, the collector or other chief officer of the cuſtoms of ſuch port as aforeſaid, immediately after the arrival of ſuch ſhip or veſſel into the ſaid port), all ſuch cambrick or *French* lawn, together with the cheſts, boxes and other package whatſoever, containing the the ſame goods, and the ſhip or veſſel on board which the ſame ſhall be found, or the value thereof, ſhall be forfeited and loſt (whether bulk ſhall have been then broken or not), and the ſame goods and package ſhall and may be ſeized and proſecuted, or the value thereof be recovered, by any officer or officers of the cuſtoms or exciſe, in manner herein after mentioned; any law, ſtatute or cuſtom to the contrary notwithſtanding."

are liable to forfeiture, together with the goods.

Foreign cambrick, or French lawn, found in poſſeſſion of any hawker or pedler, are liable to forfeiture, with all the other goods in the pack.

Sect. 7. "And be it further enacted by the authority aforeſaid, That from and after the firſt day of *July* one thouſand ſeven hundred and ſixty-ſeven, if any foreign cambrick or *French* lawn ſhall be found in the poſſeſſion of any hawker, pedler, or petty chapman, ſuch hawker, pedler, or petty chapman, ſhall not only forfeit ſuch foreign cambricks and *French* lawns, but alſo all the other goods contained in the pack where ſuch goods ſhall be found; and ſhall alſo be adjudged to have forfeited his licence."

Goods ſeiſed to be depoſited in the king's warehouſes, and to be free to inſpection;

Sect. 8. "And be it further enacted by the authority aforeſaid, That forthwith, after the ſeizure of any ſuch cambricks or *French* lawns, or as ſoon after as conveniently may be, the ſame ſhall be ſent to, and depoſited in, one of the king's warehouſes belonging to the cuſtom-houſe in *London*; and all and every ſuch cambricks and *French* lawns may, from time to time, be viewed and inſpected by any perſon or perſons on behalf of the proſecutor or proſecutors, or of the perſon or perſons intereſted in, or claiming the ſaid cambricks or *French* lawns; and the commiſſioners of his majeſty's cuſtoms

cuſtoms are hereby required to make and give ſufficient orders from time to time for that purpoſe; and after condemnation thereof, in due courſe of law, all and every ſuch cambricks or *French* lawns ſhall be ſtamped or marked in ſuch manner as the commiſſioners of the cuſtoms in *England*, or any three or more of them, ſhall direct; and ſhall be publickly ſold, to the beſt advantage, for exportation to the *Britiſh* colonies or plantations in *America* only; and one moiety of the produce or money ariſing by the ſale of ſuch cambricks and *French* lawns ſhall be to the uſe of his majeſty, his heirs and ſucceſſors, and the other moiety thereof to the uſe of the officer or officers who ſhall ſeize and ſecure the ſame: And no ſuch cambricks or *French* lawns ſhall be ſold otherwiſe than on condition to be exported as aforeſaid; and ſhall not be delivered out of the warehouſe or place wherein the ſame ſhall have been ſecured, until ſufficient ſecurity, by bond, ſhall be firſt given to the king's majeſty, his heirs and ſucceſſors, which the commiſſioners of his majeſty's cuſtoms are hereby impowered and required to take, that the ſame, and every part thereof, ſhall be exported as aforeſaid, and not landed again in any place except the ſaid colonies or plantations; which bonds ſhall and may be diſcharged without fee or reward, upon certificate returned, ſigned by the collector or other proper officer of ſuch colony or plantation, that the goods were there landed; or upon proof by two credible perſons that ſuch goods were taken by the enemies, or periſhed in the ſeas, the examination and proof thereof being hereby left to the judgment of the ſaid commiſſioners; which commiſſioners are hereby impowered and required, from time to time, to call upon the perſon or perſons who have entered into ſuch ſecurity to produce ſuch certificate or proof as aforeſaid; and in default of producing ſuch certificate, or proof to the ſatisfaction of the ſaid commiſſioners, ſuch bonds ſhall and may be put in ſuit, and proſecuted by order of the ſaid commiſſioners, againſt the perſon or perſons who ſhall ſo make default, in ſuch manner as offences of the like kind are ſued or proſecuted by any law or ſtatute of this realm."

and, after condemnation, to be ſtamped, and ſold for exportation.

The money ariſing by the ſale to be divided between the crown and the officer.

Bond to be given for the due exportation thereof;

to be diſcharged upon certificate according thereto, on proof of the goods having been taken by the enemy, or loſt at ſea;

otherwiſe to be put in ſuit.

Sect. 9. "And be it further enacted by the authority aforeſaid, That if any officer or officers ſhall neglect or refuſe, for the ſpace of one month after the condemnation of ſuch goods, to proſecute to effect any perſon or perſons for any penalty or forfeiture by this act inflicted upon offenders againſt the ſame; that then, and in every ſuch caſe, it ſhall be lawful for any perſon or perſons whomſoever to ſue for, proſecute and recover the reſpective penalties or forfeitures by this act inflicted, by action of debt, bill, plaint or information, in any of his majeſty's courts of record at *Weſtminſter*, or court of exchequer in *Scotland*, together with coſts of ſuit; wherein no eſſoin, protection, privilege or wager of law, or more than one imparlance, ſhall be allowed; and that one moiety of ſuch penalties and forfeitures ſhall be to the uſe of the king's majeſty, his heirs and ſucceſſors, and the other moiety thereof to ſuch perſon or perſons as ſhall ſue for and recover the ſame."

Where, after condemnation, officer ſhall neglect to ſue for the penalty, any perſon may ſue for, and recover the ſame;

to be divided between the crown and proſecutor.

Sect. 10. "And be it further enacted by the authority aforeſaid, That all cambricks, or goods of the kind uſually known under that denomination,

Cambricks fabricated in

Great Britain to be ſtamped at each end.

tion, which from and after the twenty-ninth day of *September* one thouſand ſeven hundred and ſixty-ſeven, ſhall be woven or fabricated in *Great Britain*, ſhall be marked or ſtamped at each end of every piece with ſuch mark or ſtamp, and by ſuch officer or officers, as the commiſſioners of the exciſe in that part of *Great Britain* called *England*, and that part of *Great Britain* called *Scotland*, ſhall reſpectively direct and appoint for that purpoſe."

Commiſſioners of exciſe, upon requeſt made to them by the maker or proprietor of cambricks, may order ſtamps to be made;

or direct and appoint officers to ſtamp the pieces,

for which they are to be paid as the commiſſioners ſhall direct.

Sect. 11. "And be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for the ſaid reſpective commiſſioners of exciſe for the time being, or the major part of them, from time to time, upon requeſt made to them by any ſuch perſon or perſons, and at the expence of ſuch perſon or perſons, to provide ſuch marks or ſtamps, as to the ſaid reſpective commiſſioners, or the major part of them, ſhall ſeem proper; or to direct and appoint one or more ſupervifor or other officer or officers of the exciſe, of the diſtrict or diviſion in which any ſuch manufacture ſhall be carried on, to mark or ſtamp each and every piece of ſuch cambrick, or goods of the kind uſually known under that denomination, which ſhall be made, wove or fabricated by ſuch perſon or perſons applying as aforeſaid, with ſuch mark or ſtamp, or marks or ſtamps, in manner herein after mentioned and directed; and the officer or officers of exciſe, who ſhall be ſo appointed to mark or ſtamp ſuch goods, ſhall, by the fabricator, maker, weaver or proprietor of ſuch goods, be paid, for every piece of ſuch goods which he or they ſhall mark or ſtamps in purſuance of this act, ſuch ſum as the commiſſioners of exciſe, for the time being, or the major part of them, ſhall direct and appoint.

Notice for the purpoſe to be given to the officers, and the goods to be ſtamped before they are cut out of the loom,

on penalty of 5 l.

and forfeiture of the goods.

Sect. 12. "And be it further enacted by the authority aforeſaid, That all and every perſon and perſons, who ſhall weave, fabricate, or make any ſuch cambrick, or goods of the kind uſually known by that denomination, ſhall, before the ſame ſhall be taken or cut out of the loom, give notice in writing of finiſhing of every or any piece or pieces of ſuch goods, to ſuch ſupervifor or other officer as aforeſaid; who, before any ſuch piece of goods ſhall be cut out of the loom, ſhall mark or ſtamp both ends of ſuch piece of goods with ſuch mark or ſtamp as ſhall be provided and appointed for that purpoſe in manner aforeſaid; upon pain that every perſon, who ſhall weave, make or fabricate ſuch cambrick, or goods of the kind uſually known by that denomination, and ſhall cut or take any piece of ſuch goods out of the loom after the ſame ſhall have been finiſhed, or permit the ſame to be done without having firſt given ſuch notice in writing, and having ſuch piece marked or ſtamped as aforeſaid, ſhall, for every ſuch offence, forfeit the ſum of five pounds; and the goods ſo cut out of the loom, without ſuch notice being given, and ſuch marks or ſtamps being ſet thereon, in manner herein before directed, ſhall be forfeited, and ſhall and may be ſeized by any officer or officers of the cuſtoms or exciſe.

Officer to attend, on reaſonable notice given him,

Sect. 13. "And be it further enacted by the authority aforeſaid, That every ſupervifor, or other officer of the exciſe of the diſtrict in which any ſuch manufacture of cambrick, or goods of the kind uſually known by or under that denomination, ſhall be carried on, who ſhall be ſo as aforeſaid

appointed by the commiſſioners of the exciſe, or the major part of them, to mark or ſtamp ſuch goods, upon reaſonable notice given to him or them by any perſon or perſons who ſhall make, weave or fabricate any ſuch goods, that any piece of ſuch goods is finiſhed, ſhall forthwith, or as ſoon as conveniently may be, conſiſtent with other the duty and buſineſs of his office, in manner herein before directed, mark or ſtamp both ends of ſuch piece of goods with ſuch mark or ſtamp as ſhall be ſo appointed and provided for that purpoſe; and alſo fix or ſet a diſtinct and ſeparate number to every piece of ſuch goods, before the ſame ſhall be taken out of the loom; and alſo make a juſt and true entry in writing, in proper books to be provided for that purpoſe at the expence of the manufacturer of ſuch goods, of the number ſet to each piece of ſuch goods, and the number of yards which each piece of ſuch goods ſhall contain in length; and alſo the number of threads contained in the warp of each piece of ſuch goods; upon pain that every ſuperviſor, or other officer ſo appointed as aforeſaid, who ſhall, upon reaſonable notice given as aforeſaid of the finiſhing of any piece of ſuch goods, neglect or refuſe to mark or ſtamp any piece of ſuch goods in manner herein before directed, or to fix or ſet a diſtinct and ſeparate number on each piece of ſuch goods, or to make a true and juſt entry in manner aforeſaid of the number ſet or affixed to each piece of ſuch goods, and of the number of yards which each piece thereof ſhall contain in length, and alſo the number of threads contained in the warp of each piece of ſuch goods; ſhall, for every ſuch refuſal or neglect, forfeit and pay the ſum of five pounds ſterling money.

in order to affix the ſtamps; and he is to make entry of the No. ſet to each piece, and the No. of yards it contains, and the No. of threads in the warp; on forfeiture of 5 l.

Sect. 14. "And be it further enacted by the authority aforeſaid, That if any ſuch ſuperviſor, or other officer or officers of the exciſe, who ſhall be ſo appointed to ſeal or ſtamp ſuch cambricks, or who ſhall have the cuſtody of any mark or ſtamp which ſhall be ſo provided and appointed to mark or ſtamp ſuch goods, ſhall therewith mark or ſtamp any cambricks or lawns, or goods of the kind uſually known by or under thoſe denominations, which ſhall not have been made, wove or fabricated in *Great Britain*, or ſhall knowingly permit it to be done; or ſhall mark or ſtamp any piece of ſuch goods, after the ſame ſhall be taken out of the loom: every ſuch ſuperviſor, or other officer or officers ſo marking or ſtamping any ſuch cambricks or lawns, or goods of the kind uſually known under either of thoſe denominations, or wilfully or knowingly permitting the ſame to be done, contrary to the true intent and meaning of this act, ſhall forfeit the ſum of fifty pounds for every piece of ſuch goods which he or they ſhall ſo mark or ſtamp, or permit or ſuffer to be marked or ſtamped, contrary to the true intent and meaning of this act; and ſuch ſuperviſor, or other officer or officers, upon being convicted of either or any of the offences aforeſaid, ſhall loſe his or their office or offices and employments, and is and are hereby declared and rendered ever after incapable of having, uſing or enjoying any office or place of truſt under his majeſty, his heirs and ſucceſſors."

Officers fraudulently ſtamping, or permitting to be ſo done, any goods not fabricated in Great Britain, or after their being taken out of the loom, forfeits 50 l *per* piece, and is incapacitated;

Sect. 15. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall, by bribery, fraud, covin, deceit or impoſition,

and the perſons concerned in procu-

ring such fraud to be committed;

sition, or in any other manner whatsoever, prevail on, or procure any officer or officers of the excise, or other person who shall be appointed to mark or stamp any cambricks, or who shall have the custody of any mark or stamp, to mark or stamp any piece or pieces of cambrick or lawn, or of goods of the kind usually known under either of those denominations, which shall not have been actually and *bona fide* made, wove or fabricated in *Great Britain*; or after the same shall have been cut or taken out of the loom, contrary to the true intent and meaning of this act; all and every such offender and offenders, and his and their aiders and abettors, and assistants, being thereof lawfully convicted, shall, for every such offence, forfeit and lose the sum of one hundred pounds, and be adjudged to stand in the pillory two hours: And if any person or persons shall give, pay or secure, or offer to give, pay or secure, to any such officer or officers, or other person as aforesaid, any bribe, recompence or reward of any kind whatsoever, in order to corrupt, persuade or prevail on such officer or officers, or other person, to set or affix such mark or stamp as aforesaid to any piece or pieces of cambrick, directed by this act to be marked or stamped, which shall not have been actually and *bona fide* made, wove and fabricated in *Great Britain*, or after the same shall have been taken out of the loom; such person or persons so offending shall, for every such offence, forfeit and lose the sum of fifty pounds."

their aiders and abettors forfeit 100 l. and to stand in the pillory;

and persons attempting by bribery, or otherwise, to corrupt officers, to affix the stamps falsely to any piece,

forfeit 50 l.

Sect. 16. "And be it further enacted by the authority aforesaid, That all and every supervisor, or other officer or officers of excise, who shall in manner aforesaid be appointed to mark or stamp any cambricks in pursuance of this act, shall yearly and every year (while such officers shall have the custody of any such stamp provided and appointed for that purpose in manner aforesaid) in the month of *June*, transmit and send to the commissioners of excise in *London* or *Edinburgh* respectively, a full, true and just account in writing, of all and every piece and pieces of such goods which he or they shall mark or stamp in pursuance of this act; and also a true copy of all and every entry or entries, of any kind whatsoever, which he or they shall make in any such book or books provided for that purpose, in any wise relating thereto, for and during the twelve calendar months next preceding the said month of *June*; distinguishing in such accounts the several manufacturers or proprietors, if there shall be more than one such in such officer's district, who shall have made or be owners of such goods; upon pain of being dismissed from his or their employ as an officer or officers of the excise: And all and every such officer or officers having the custody of any such mark or stamp as aforesaid, his or their executors or administrators, or such other person or persons in whose custody or power the same shall fall or come by the death of such officer or officers, or in any other manner, shall, upon demand or order from or by the commissioners of excise, or the major part of them, deliver up to such commissioners, or such person or persons as they shall appoint to receive the same, all and every such mark or stamp which shall have been delivered to such officer or officers, or by any other means come or fallen into the hands, custody or power of such officer or officers, or other persons whatsoever; upon pain that

Officer to transmit to the commissioners of excise an account yearly of the No. of pieces stampt by him;

and a copy of his entries;

distinguishing the manufacturers;

on penalty of dismission.

The stamps to be delivered upon demand or order of the commissioners,

that any ſuch officer or officers, or other perſon refuſing or neglecting ſo to do, upon any ſuch order or demand as aforeſaid, ſhall forfeit and loſe the ſum of two hundred pounds; to be recovered and applied in manner hereinafter mentioned." — on forfeiture of 200 l.

Sect. 17. "And be it further enacted by the authority aforeſaid, That if any cambrick, or goods of the kind uſually known by or under that denomination, made, wove or fabricated in *Great Britain*, after the ſaid twenty-ninth day of *September* one thouſand ſeven hundred and ſixty-ſeven, ſhall be found in any place whatſoever in *Great Britain*, without being marked or ſtamped at each end of every whole and intire piece, and at one end of every remnant of ſuch cambrick, or goods of the kind uſually known by or under that denomination, all ſuch goods ſhall be forfeited, and ſhall and may be ſeized by any officer of the exciſe or cuſtoms; and ſuch officer or officers is and are hereby indemnified for ſeizing ſuch goods; and ſuch goods ſo ſeized ſhall be depoſited in the king's warehouſe at the cuſtom-houſe at *London*, or in the exciſe office next to the place where the ſame ſhall be ſeized; and after condemnation thereof, by due courſe of law, ſhall be publickly ſold to the beſt bidder; and that one moiety of the produce ariſing from the ſale thereof, after deducting the charges and expences attending the condemnation and ſale of ſuch goods, ſhall be to the uſe of his majeſty, his heirs and ſucceſſors, and the other moiety to ſuch officer or officers who ſhall ſeize or ſue for the ſame; and all and every perſon or perſons who ſhall ſell or expoſe to ſale, or have in his or their cuſtody for that purpoſe, any cambrick, or goods of the kind uſually called or known by or under that denomination, made and fabricated in *Great Britain*, and not marked or ſtamped at both ends of every intire piece, or at one end of every remnant of ſuch goods, in manner by this act directed, ſhall, for every ſuch offence, forfeit the ſum of two hundred pounds; to be recovered and applied in manner herein after directed." — Goods found not legally ſtamped, are liable to forfeiture, and may be ſeized, and depoſited in the king's warehouſes; and after condemnation, publickly ſold. Money ariſing by the ſale, after deducting all charges, to be divided between the crown and the officer. Perſons expoſing to ſale unſtampt goods, forfeit 200 l.

Sect. 18. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall, at any time or times hereafter, forge or counterfeit any mark or ſtamp, to reſemble any mark or ſtamp which ſhall be provided or uſed in purſuance of this act; or ſhall forge, reſemble or counterfeit the impreſſion of any ſuch mark or ſtamp upon any goods required by this act to be marked or ſtamped; or ſhall import or bring into *Great Britain* any foreign cambricks or lawns, or goods of the kind uſually called or known by or under either of thoſe denominations, having any ſuch counterfeit mark, ſtamp or impreſſion thereon; or ſell or expoſe to ſale any cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations, with ſuch counterfeit mark, ſtamp or impreſſion thereon, knowing ſuch mark or ſtamp to be counterfeited; every ſuch perſon ſo offending, being thereof lawfully convicted, ſhall be judged guilty of felony, and ſhall ſuffer as in caſes of felony without benefit of clergy." — Penalty of forging or counterfeiting any ſtamp; or importing, or expoſing to ſale, any goods with a counterfeit ſtamp thereon, is felony.

Sect. 19. "Provided always, and be it enacted by the authority aforeſaid, That it ſhall and may be lawful to and for the commiſſioners of exciſe in *England*, for the time being, or the major part of them, at any time — The commiſſioners may order all ſuch goods made,

or begun to be made in Great Britain or Ireland, before the commencement of the act, to be ſtamped, tho' taken out of the loom;

time within two months next after the commencement of this act, to order and direct all ſuch cambrick, or goods of the kind uſually known by or under that denomination, which ſhall have been made, or begun to be made, wove and fabricated in *Great Britain* or *Ireland*, at any time before the commencement of this act, to be marked or ſtamped at both ends of every piece thereof, with ſuch mark or ſtamp which ſhall be provided and appointed as aforeſaid, notwithſtanding the ſame ſhall have been taken out of the loom (proof being made to the ſatisfaction of the ſaid commiſſioners, that all ſuch goods were really and *bona fide* made, or begun to be made, wove and fabricated in *Great Britain* or *Ireland*, before the commencement of this act) which goods ſo marked or ſtamped, and numbered, in purſuance of ſuch directions, ſhall and may be ſold, diſpoſed of, and uſed, in like manner as if the ſame had been made or wrought after the commencement of this act, and all the directions thereof fully complied with; any thing in this act contained to the contrary thereof in any wiſe notwithſtanding: And the ſuperviſor, or other officer or officers of the exciſe, who ſhall be directed to mark or ſtamp, and number ſuch goods, ſhall make the like entry of the number of yards in length of each piece of ſuch goods, and the number ſet thereon, in like manner, and under the like penalties, as herein before directed, with reſpect to cambricks made after the commencement of this act."

and the ſame may be lawfully ſold.

Officers to make due entry of all ſuch pieces.

Perſons poſſeſſed of cambricks or clear lawns, before 1 July 1767, not duly ſtampt, may depoſit the ſame, before 1 Auguſt next, in warehouſes for exportation; upon payment of the half ſubſidy.

Sect. 20. "Provided always, and be it further enacted and declared, That if any perſon or perſons ſhall, before the ſaid firſt day of *July* one thouſand ſeven hundred and ſixty-ſeven, be poſſeſſed of any cambricks or clear lawns, or goods uſually known by either of thoſe denominations, which have not been ſtamped in the manner required by law; ſuch perſon and perſons ſhall and may, on or before the firſt day of *Auguſt* one thouſand ſeven hundred and ſixty-ſeven, depoſit ſuch cambricks or clear lawns in any warehouſe or warehouſes, to be appointed for that purpoſe by the commiſſioners of the cuſtoms in *England*, for exportation to his majeſty's colonies or plantations in *America* only, upon payment of the half ſubſidy which is to remain by law after ſuch goods are exported, without any oath or other proof being required of the place where ſuch goods were manufactured; and no proſecution ſhall be commenced againſt any perſon or perſons for having in their cuſtody or poſſeſſion any ſuch unſtamped goods, between the ſaid firſt day *July* and the firſt day of *Auguſt* one thouſand ſeven hundred and ſixty-ſeven; any thing in this or any other act of parliament to the contrary notwithſtanding.

Goods, penalties, and forfeitures, in general, where not otherwiſe directed, where to be ſued and recovered.

Sect. 21. "And be it further enacted by the authority aforeſaid, That all ſuch goods which ſhall be ſeized and condemned in purſuance of this act, and all penalties and forfeitures whatſoever by this act inflicted, (unleſs otherwiſe directed to be condemned and recovered by this act) ſhall and may be ſued for, proſecuted and recovered in any of his majeſty's courts of record at *Weſtminſter*, or in the court of exchequer in *Scotland*, by action of debt, bill, plaint or information, in the name of his majeſty's attorney general, or in the name or names of ſuch ſuperviſor, or other officer or officers of the

the exciſe or cuſtoms as aforeſaid; and that one moiety of the clear produce ariſing from the ſale of all ſuch goods, and of all the penalties and forfeitures inflicted by this act, after all charges deducted, ſhall be to his majeſty, his heirs and ſucceſſors, and the other moiety thereof to the officer or officers who ſhall ſeize, inform or proſecute for the ſame.

Produce from the ſale, after all charges, to be divided between the crown and proſecutor.

Sect. 22, "And be it further enacted by the authority aforeſaid, That upon every action, bill, plaint or information, entered or filed as aforeſaid, for any penalty impoſed by this act, a *capias* in the firſt proceſs ſhall and may iſſue, ſpecifying the ſum of the penalty ſued for; and the defendant or defendants ſhall be obliged to give ſufficient bail or ſecurity by natural born ſubjects, perſons naturalized, or denizens, to the perſon or perſons to whom ſuch *capias* ſhall be directed, to appear in the court out of which ſuch *capias* ſhall iſſue, at the day of the return of ſuch writ, to anſwer ſuch ſuit or proſecution; and ſhall likewiſe, at the time of ſuch appearance, give ſufficient bail or ſecurity by ſuch perſons as aforeſaid, in the ſaid court, to anſwer and pay all the forfeitures and penalties incurred for ſuch offence or offences, in caſe he, ſhe or they ſhall be convicted thereof, or to yield his, her or their body or bodies to priſon."

Capias to iſſue upon entering an action, &c.

Defendant to give ſufficient bail thereto.

Sect. 23. "And be it further enacted by the authority aforeſaid, That if any action or ſuit ſhall be commenced againſt any perſon or perſons, for any thing done in purſuance of this act, the defendant or defendants in ſuch action or ſuit, ſhall and may plead the general iſſue, and give this act, and the ſpecial matter, in evidence, at any trial to be had thereon, and that the ſame was done by the authority of this act; and if it ſhall appear to have been ſo done, then the jury ſhall find for the defendant or defendants: And if the plaintiff or plaintiffs ſhall become nonſuited, or diſcontinue his, her or their action or ſuit, after the defendant or defendants ſhall have appeared; or if, upon verdict or demurrer, judgment ſhall be given againſt the plaintiff or plaintiffs, the defendant or defendants ſhall recover treble coſts, and have ſuch remedy for the ſame as any defendant or defendants hath or have in other caſes by law."

General iſſue.

Treble coſts.

Sect. 24. "And be it further enacted by the authority aforeſaid, That if any cambricks or lawns, or goods of the kind uſually known by or under either of thoſe denominations, ſhall be ſeized by virtue or in purſuance of this or any other act now in force; or if any action ſhall be brought by the owner or claimer of ſuch goods againſt any officer of the cuſtoms or exciſe, or any other perſon, for any thing done in purſuance of this or any other act now in force, and any doubt or queſtion ſhall ariſe where ſuch goods were manufactured; the proof thereof ſhall lie upon the owner or claimer of ſuch goods, and not on the perſon who ſeized the ſame, or againſt whom ſuch action ſhall be brought; any law, uſage or cuſtom to the contrary notwithſtanding."

In caſe of doubt or queſtion, where the goods were manufactured,

the proof to lie on the owner or claimer.

Carriers.

ALL perſons carrying goods for hire, as maſters and owners of ſhips, lighter-men, ſtage-coach men, *&c.* come under the denomination of common carriers, and are chargeable on the general cuſtom of the realm for their faults and miſcarriages. *Co. Lit.* 89. 1 *Rol. Abr.* 2, 338.

Alſo if a perſon, who is no common carrier, takes upon himſelf to carry my goods, though I promiſe him no reward, yet if my goods are loſt or damaged by his default, I ſhall have an action againſt him. 1 *Bac. Abr.* 343.

But the maſter of a ſtage-coach, who only carries paſſengers for hire, ſhall not be liable for the goods of his paſſengers that are loſt, and therefore where *A.* delivered a trunk to the driver or ſervant, who loſt it out of his poſſeſſion, it was held, that the maſter was not liable in an action upon the caſe on the cuſtom of the realm; for though the ſervant received money for it, yet that was but a gratuity; and the maſter ſhall not be chargeable with the acts of his ſervant, otherwiſe than as he acts in execution of the authority given him. 1 *Bac. Abr.* 343.

In what caſes a carrier is chargeable for a failure in his duty.

If a man deliver goods to a common carrier to carry them to a certain place, if he loſes them, an action upon the caſe lies againſt him; for by the common cuſtom of the realm he ought to carry them ſafely. 1 *Rol. Abr.* 2. *Hob.* 17. *Cro. Jac.* 262.

Alſo if a common carrier, who is offered his hire, and who has convenience, refuſes to carry goods, he is liable to an action in the ſame manner as an inn-keeper who refuſes to entertain a gueſt, or a ſmith who refuſes to ſhoe a horſe. 2 *Show. Rep.* 327.

If a man delivers goods to a common hoyman, who is a common carrier of goods, to carry them to a certain place, and pays him according to the cuſtom for the carriage of them, and after for default of good keeping they are loſt; an action upon the caſe lies againſt him; for by the common cuſtom of the realm he ought to have kept and carried them ſafely. *Cro. Jac.* 330. *Hob.* 17.

If a man delivers goods to ſuch common hoyman, to carry to a place, and after delivers them (being of good value) to another to keep ſafely in the boat, and does not diſcharge the hoyman, and after they are loſt through negligence, an action on the caſe lies againſt him. 1 *Rol. Abr.* 2. *Hob.* 17. *Cro. Jac.* 330. *S. C.*

If *A.* delivers goods at *York* to *B.* (who is a water-carrier between *Hull* and *London*) to carry them from *Hull* to *London*; though the agreement is to carry the goods from *Hull* to *London*, and no mention is made of the carriage to *Hull*, yet if the goods are loſt *B.* ſhall anſwer for them, for

upon his general receipt of them at *York*, he is liable. 1 *Sid.* 36. ſee 1 *Rol. Abr.* 338. 2 *Show.* 129.

If a merchant lades goods aboard a ſhip, to be tranſported at a reaſonable reward of freight to be paid to the owners, and in the night time while the ſhip rides in the river *Thames*, notwithſtanding a competent number of men are left aboard for the guard of the ſhip and goods, yet ſeveral perſons, under pretence of preſſing ſeamen, ſeize on the men aboard, and take away the goods; an action will lie againſt the maſter, for in effect, he is paid by the merchants, for the merchant pays the owners, and the owners pay the maſter; ſo that the money of the merchant is but handed over by them to the maſter; adjudged and ſaid, That though by the admiral law, the maſter is not chargeable *pro damno fatali*, as in caſe of pirates, ſtorm, *&c.* where there is no negligence in him; yet becauſe this ſhip was *infra corpus comitatus*, this caſe muſt not be meaſured by the rules of that law. 1 *Vent.* 190, 233.

If *A.* and ſeveral others take their paſſage in a ferry-boat, and being upon the water a tempeſt ariſes, ſo that they are in much danger of being drowned, upon which, to preſerve their lives ſeveral of the goods were caſt over-board, among which a pack of goods of *A.*'s of great value is thrown over; *A.* ſhall have no action againſt the bargemen. 2 *Bulſt.* 280.

It is clearly reſolved, that if a carrier be robbed he ſhall anſwer the value of the goods, for he hath his hire, which implies an undertaking for the ſafe cuſtody and delivery of them, which charges him at all events; and this political inſtitution was introduced the better to ſecure people in their dealings, and to prevent carriers who are often entruſted with things of the greateſt value, from confederating with robbers, *&c. Co Lit.* 89. 4 *Co.* 84. *Owen* 57. 1 *Rol. Abr.* 2, 124. 2 *Rol. Abr.* 367. 1 *Rol. Rep.* 79. *Hob.* 17, 18.

So if *A.* delivers a box to a carrier to carry, and he aſks what is in it; and *A.* tells him, a book and tobacco, and in truth there is 100 *l.* beſides, yet if the carrier is robbed, he ſhall anſwer for the money; for *A.* was not bound to tell him all the particulars in the box, and it was the buſineſs of the carrier to have made a ſpecial acceptance. Ruled by *Roll*, at the *Niſi Prius* at *Guildhall*, but in regard of the intended cheat to the carrier, he told the jury, they might conſider of it in damages, but yet the jury gave the plaintiff 97 *l.* damages, abating 3 *l.* only for the carriage; *quod durum videbatur circumſtantibus. Allen* 93.

But if *A.* being a common carrier receives, by his book-keeper, from the ſervant of *B.* two bags of money ſealed up, containing, as was told him, 200 *l.* And the book-keeper gives a receipt for his maſter to this effect, *Received of*, &c. *two bags of money ſealed up ſaid to contain* 200 *l. which I promiſe to deliver on ſuch a day at* Exeter, *into — he to pay* 10 *s.* per cent. *for carriage and riſque*; though the bags contain 450 *l.* and the carrier is robbed, he ſhall be anſwerable only for 200 *l.* for this is a particular undertaking, and as it is by reaſon of the reward that the carrier is liable, which when the

plaintiff endeavours to defraud him of, it is but reaſonable he ſhould be barred of that remedy which is only founded on the reward. *Carth.* 485.

Of a carrier's intereſt in the things delivered to his charge.

A carrier who hath goods delivered to him, undertakes for his hire to deliver them ſafely, and he hath the poſſeſſion of them for no other purpoſe; yet he hath ſuch a ſpecial limited property, that he may bring trover and converſion againſt a ſtranger that takes them away, or he may ſue the hundred when robbed of them, becauſe he is anſwerable over in damages to the abſolute owner. *Co. Lit.* 89. 4 *Co.* 83. 2 *Bulſt.* 311. 1 *Sid.* 438. 1 *Mod.* 30. 2 *Sand.* 47.

So a carrier by reaſon of his poſſeſſion, and this ſpecial kind of property, may have an appeal of larceny againſt one who robs him of the goods committed to his charge. 2 *Hawk. P. C.* 167.

Alſo a carrier by not delivering the goods, or by imbeziling of them, cannot be guilty of felony; but if he opens a pack and takes out part of the goods, with an intent to ſteal that part, he is guilty of felony; for a poſſeſſion of part diſtinct from the whole was gained by wrong, and not delivered by the owner, alſo it was obtained baſely, fraudulently and clandeſtinely in hopes to prevent its being diſcovered at all, or fixed upon any one when diſcovered. 1 *Rol. Abr.* 37. 1 *Hawk. P. C.* 90.

So if a carrier, after he has brought the goods to the place appointed, take them away again ſecretly *animo furandi*, he is guilty of felony, becauſe the poſſeſſion which he received from the owner being determined, his ſecond taking is in all reſpects the ſame as if he were a mere ſtranger. 1 *Hawk. P. C.* 90.

Alſo if a ſtranger ſteals the goods delivered to a carrier, he may be indicted generally, as having ſtolen goods; ſo by reaſon of this ſpecial property, if the owner, with an intent to make the carrier anſwer for them, fraudulently and ſecretly takes them away, he is guilty of felony, and may be indicted generally, as having ſtolen his goods; for the injury is altogether as great, and the fraud as baſe, where they are taken away by the owner, as by a ſtranger. *Keilw.* 70. 1 *Hawk. P. C.* 94.

By *ſtat.* 3 *Car.* 1. *c.* 1. A carrier that travels on the Lord's day ſhall forfeit 20 *s.* *See this act at large under title* **Butchers.**

Stat. 3 *Will. & Ma. c.* 12. [*A. D.* 1691.] *made, among other purpoſes,* "for ſettling the rates of carriages of goods."

Juſtices once a year to ſettle the rates of carriages.

Sect. 24. "And whereas divers waggoners and other carriers, by combination amongſt themſelves, have raiſed the prices of carriage of goods in many places to exceſſive rates, to the great injury of trade; Be it therefore enacted by the authority aforeſaid, That the juſtices of the peace of every county and other place within the realm of *England*, or dominion of *Wales*, ſhall have power and authority, and are hereby injoined, and required, at their next reſpective quarter or general ſeſſions after *Eaſter* day yearly, to aſſeſs and rate the prices of all land carriage of goods whatſoever, to be brought into any place or places within their reſpective limits and juriſdictions, by any common waggoner or carrier, and the rates and aſſeſſments ſo made,

to certify to the ſeveral mayors and other chief officers of each reſpective market town within the limits and juriſdictions of ſuch juſtices of the peace, to be hung up in ſome publick place in every ſuch market town, to which all perſons may reſort for their information; and that no ſuch common waggoner or carrier ſhall take for carriage of ſuch goods and merchandizes above the rates and prices ſo ſet, upon pain to forfeit for every ſuch offence the ſum of five pounds, to be levied by diſtreſs and ſale of his and their goods, by warrant of any two juſtices of the peace where ſuch waggoner or carrier ſhall reſide, in manner aforeſaid, to the uſe of the party grieved.

5 l. penalty upon carrier, taking above the rate.

Stat. 21 *Geo.* 2. *c.* 28. [*A. D.* 1748.] *made, among other purpoſes,* "to explain and amend ſo much of an act paſſed in the third year of the reign of king *William* and queen *Mary*, [the preceding act] as relates to the ſettling the rates of the carriage of goods."

Sect. 3. "And whereas by an act made and paſſed in the third year of the reign of king *William* and queen *Mary*, intituled, *An act for the better repairing and amending the highways, and for ſettling the rates of carriage of goods*, it is enacted, That the juſtices of the peace of every county, and other place within the realm of *England*, or dominion of *Wales*, ſhould have power and authority, and they were thereby injoined and required, at their next reſpective quarter-ſeſſion after *Eaſter* yearly, to aſſeſs and rate the prices of all land carriage of goods whatſoever, to be brought into any place within their reſpective limits and juridictions, by any common waggoner or carrier, to be certified and publiſhed in ſuch manner as is therein mentioned; and that no ſuch common waggoner or carrier ſhould take for the carriage of ſuch goods or merchandize, above the rates and prices ſo ſet; upon pain to forfeit for every ſuch offence the ſum of five pounds, to be levied and recovered as is by the ſaid act directed: And whereas no rates for the carriage of goods, from diſtant parts of the kingdom to the city of *London*, and places adjacent, have been yet ſettled, and ſeveral common waggoners and carriers have from thence taken occaſion to enhance the price of carriage of goods to the prejudice and obſtruction of trade; Be it therefore further enacted by the authority aforeſaid, That if any common waggoner or carrier ſhall, after the tenth day of *June* one thouſand ſeven hundred and forty-eight, demand and take any greater price for the bringing of goods to the city of *London*, or to any place within the bills of mortality, than is allowed and ſettled by the juſtices of the peace for the county or place from whence ſuch goods are brought, for the carrying of goods from *London* to the ſaid county or place, every ſuch carrier or waggoner ſhall, for every ſuch offence, forfeit and pay the ſum of five pounds, to the uſe of the party grieved, to be recovered and levied in the manner by the laſt-mentioned act directed, or by diſtreſs and ſale of his goods, by warrant under the hands and ſeals of any two juſtices of the peace for the counties of *Middleſex* or *Surry*, or city of *London*, or city and liberty of *Weſtminſter*; and the clerk of the peace for every county and place ſhall, immediately

3 W. & M. c. 12.

Penalty of waggoners demanding a greater price for carriage than allowed.

Clerks of the peace to certify yearly the

rates for carriage.

immediately after *Eaſter* ſeſſion yearly, certify to the lord mayor of the city of *London*, and alſo to the reſpective clerks of the peace for the counties of *Middleſex* and *Surry*, and city and liberty of *Weſtminſter*, the rates and aſſeſſments made for the carriage of goods in purſuance of the ſaid act, in their reſpective counties and places, which certificate, or an atteſted copy thereof, ſigned by the officer to whom the ſame ſhall be ſo tranſmitted, ſhall be taken and deemed ſufficient evidence of the rates and prices ſet for the carrying of goods to any county or place."

Cattle.

STATUTE 25 *Hen.* 8. *c.* 23. [*A. D.* 1533. *intituled*] "Concerning the number of ſheep one ſhould keep."

What number of ſheep men may keep.

"Foraſmuch as divers and ſundry of the king's ſubjects of this realm, to whom *God* of his goodneſs hath diſpoſed great plenty, and abundance of moveable ſubſtance, now of late within few years, have daily ſtudied, practiſed, and invented ways and means how they might accumulate and gather together into few hands, as well great multitudes of farms, as great plenty of cattle, and in eſpecially ſheep, putting ſuch lands as they can get to paſture, and not to tillage, (2) whereby they have not only pulled down churches and towns, and inhanced the old rates of the rents of the poſſeſſions of this realm, or elſe brought it to ſuch exceſſive fines, that no poor man is able to meddle with it, but alſo have raiſed and enhanced the prices of all manner of corn, cattle, wooll, pigs, geeſe, hens, chickens, eggs, and ſuch other, almoſt double above the prices which have been accuſtomed; (3) by reaſon whereof a marvellous multitude and number of the people of this realm be not able to provide meat, drink and clothes neceſſary for themſelves, their wives and children, but be ſo diſcouraged with miſery and poverty, that they fall daily to *theft*, robbery and other inconveniences, or pitifully die for hunger and cold; (4) and it is thought by the king's moſt humble and loving ſubjects, that one of the greateſt occaſions that moveth and provoketh thoſe greedy and covetous people ſo to accumulate, and keep in their hands ſuch great portions and parts of the grounds and lands of this realm from the occupying of the poor huſbandmen, and ſo to uſe it in paſture and not in tillage, is only the great profit that cometh of ſheep, which now be come in a few perſons hands of this realm, in reſpect of the whole number of the king's ſubjects, that ſome have four and twenty thouſand, ſome twenty thouſand, ſome ten thouſand, ſome ſix thouſand, ſome five thouſand, and ſome more, and ſome leſs; (5) by the which a good ſheep for victual, that was accuſtomed to be ſold for two ſhillings four pence, or three ſhillings at the moſt, is now ſold for ſix ſhillings, or five, or four ſhillings at the leaſt; (6) and a ſtone of clothing wooll,

The ſeveral enormities that do enſue by the greedy

wooll, that in ſome ſhires of this realm was accuſtomed to be ſold for eighteen pence, or twenty pence, is now ſold for four ſhillings or three ſhillings four pence at the leaſt; *and* in ſome countries where it hath been ſold for two ſhillings four pence, or two ſhillings eight pence, or three ſhillings at the moſt, it is now ſold for five ſhillings, or four ſhillings eight pence the leaſt, and ſo are raiſed in every part of this realm: (7) which things, thus uſed, be principally to the high diſpleaſure of *Almighty God*, to the decay of the hoſpitality of this realm, to the diminiſhing of the king's people, and to the let of the cloth-making, whereby many poor people have been accuſtomed to be ſet on work; and in concluſion, if remedy be not found, it may turn to the utter deſtruction and deſolation of this realm, which *God* defend; (8) It may therefore pleaſe the king's highneſs, of his moſt gracious and godly diſpoſition, and the lords ſpiritual and temporal, of their goodneſs and charity, with the aſſent of the commons, in this preſent parliament aſſembled, to ordain and enact, by the authority of the ſame, That no perſon or perſons, from the feaſt of ſaint *Michael* the archangel, which ſhall be in the year of our *Lord God* 1535, ſhall keep, occupy, or have in his poſſeſſion, in his own proper lands, nor in the poſſeſſion, lands, nor grounds of any other, which he ſhall have or occupy in farm, nor otherwiſe have of his own proper cattle, in uſe, poſſeſſion, or property, by any manner of means, fraud, craft or covin, above the number of two thouſand ſheep at one time, within any part of this realm, of all ſorts and kinds; (9) upon pain to loſe and forfeit for every ſheep that any perſon or perſons ſhall have or keep above the number limited by this act, iii. *s.* iv. *d.* the one half to the king our ſovereign lord, and the other half to ſuch perſon as will ſue for the ſame, by original writ of debt, bill, plaint or information in any court of record, in which ſuit the defendant ſhall not wage his law, nor have any eſſoin or protection allowed."

Deſire of having many ſheep.

No man ſhall have above 2000 ſheep.

Sect. 2. "Provided alway, That lambs ſhall not be accounted of the number of the ſheep prohibited by this act, ſo long as they be under the age of a year, and not above."

Lambs under one year old ſhall not be counted ſheep.

Sect. 3. "Provided alway, That if any perſon having ſheep of his own, happen to be made executor, or to be adminiſtrator to any perſon which had ſheep at his death, or happen to be married to any perſon which ſhall happen to have ſheep at the time of the marriage, by reaſon whereof the perſon ſo being executor or adminiſtrator, or being ſo married, ſhall happen by ſuch means to be advanced, and have above the ſaid number of two thouſand ſheep, that then in every ſuch caſe the perſon ſo advanced to loſe no penalty for having above the number of two thouſand ſheep by ſuch means, ſo that within one year next after ſuch advancement, the perſon ſo advanced, from time to time, as often as any ſuch caſe ſhall happen, do put to ſale, or otherwiſe diſpoſe ſo many of the ſaid ſheep ſo to him advanced, or elſe of his own ſheep, that he had before, ſo that above one year he ſhall not keep, have or occupy by any ſuch means, or otherwiſe by any fraud or covin, any more number of them than is before limited by this act, upon the pain before rehearſed."

Sheep coming by executorſhip or marriage.

Sect. 4. "Provided alſo, That if any perſon by his laſt will and teſtament give to any child within age any number of ſheep, and appoint them

Sheep bequeathed by

will to a child within age.

them by his ſaid will to be kept by his executors, or by any other perſon, until ſuch time as the ſaid child ſhall come to a certain age limited by his will, that then in every ſuch caſe, after the death of the teſtator, the ſaid ſheep, ſo being in the poſſeſſion and occupation of the executors, or of any other perſon, to the uſe of any ſuch child within age, for that time only that the ſaid child ſhall be within the age that he ſhall be limited to have the ſaid ſheep by the will of the teſtator, ſhall not be accounted againſt the ſaid executors, nor any perſon ſo having the ſaid ſheep, for the intent aforeſaid, any of the number of the ſheep prohibited by this act; any thing in this act to the contrary thereof notwithſtanding."

Juſtices of the peace ſhall inquire of the offenders of this act.

Sect. 5. "And is further enacted, That the juſtices of the peace of every ſhire ſhall have power and authority to enquire of the offenders of this act, as well by the oaths of twelve men, as by information of any of the king's ſubjects, and to make ſuch like proceſs upon every preſentment or information concerning this act, as they uſe commonly to do upon preſentments before them of treſpaſs; and that no perſon being convict by confeſſion or otherwiſe, that he hath done or attempted contrary to this act, ſhall be put to any leſs fine than after the rates of forfeitures afore limited by this act."

Within what time the ſuit ſhall be commenced againſt an offender.

Sect. 6. "Provided always, That no perſon ſhall be put to any anſwer or loſs of any forfeiture by virtue of this act, at the ſuit any of the king's ſubjects, by any original writ of debt, bill, plaint or information, except the ſuit be commenced within one year next after the offence done or committed contrary to this act: (2) Nor that any perſon ſhall be put to anſwer, nor to any loſs of any forfeiture by virtue of this act, by reaſon of any preſentment, action or information at the king's ſuit, except the ſame preſentment, action or information be had and made for the king within three years next after the offence done or committed."

Every perſon temporal may keep upon his inheritance, &c. as many ſheep as he will.

Sect. 7. "Provided alway, That all and every perſon and perſons, being the king's temporal ſubjects of this realm, and born under his obeiſance, which at this preſent time, or at any time hereafter ſhall have, or be ſeized of inheritance, in poſſeſſion or in uſe, or that now hath, or hereafter ſhall have juncture in uſe or poſſeſſion, or be or ſhall be tenant in dower, or by the curteſy of *England*, of or in any manors, lands, tenements, paſtures, feedings or liberties, or foldage within any part of this realm of *England*, *Wales* or the marches of the ſame, that every ſuch perſon and perſons, having any ſuch poſſeſſion to his own uſe, and every ſuch perſon and perſons, to whoſe uſe any other perſon and perſons now is, or be, or hereafter ſhall be ſeiſed of any ſuch eſtate, as is before rehearſed, may at all times hereafter have, enjoy, keep and maintain upon the ſame their own demeſn lands, and all other their paſtures, feedings and fold-courſes, which they ſo have, as many their own ſheep and lambs in number to their own proper uſe, profit and behoof, as they or any of them of right had, or lawfully might have had and kept upon the ſame, or upon any part thereof, at any time before the making of this preſent act; this act, or any thing therein contained or ſpecified to the contrary in any wiſe notwithſtanding."

Sect. 8.

Sect. 8. And over that be it enacted by the authority aforeſaid, That in caſe any ſuch perſon or perſons, having any ſuch eſtate in uſe or in poſſeſſion, of or in any manors, lands, tenements, paſtures, feedings or liberties of fold-courſes, as is before expreſſed, have or do keep upon the ſame their poſſeſſions the number of two thouſand ſheep, or above, the ſame perſon or perſons ſo having the number of two thouſand ſheep, or above, ſhall not in any wiſe keep, ſuſtain or have any ſheep above, or beſide the ſaid number of two thouſand, upon any lands, paſtures or feedings, which the ſame perſon or perſons have, or hereafter ſhall have, or take in ferm or otherwiſe, upon ſuch like pains and forfeitures for the ſame, as be limited in the ſaid act; that is to ſay, for every ſheep over and above the ſaid number of two thouſand, three ſhillings four pence: (2) And in caſe the ſaid demeſn lands, tenements, paſtures, feedings and liberries of fold-courſes of any perſon or perſons before rehearſed, ſuffice not for the feeding, paſturing and keeping of two thouſand ſheep, as is aforeſaid, that then every ſuch perſon ſhall and may have, ſuſtain or feed upon his ſaid demeſn lands, and upon his ferm-holds, which he lawfully may have, to the ſaid number of two thouſand ſheep, and not above, upon pain of forfeiture for every ſheep above that number, *iij. s. iv. d.*"

Two thouſand ſheep may be kept by any perſon upon demeſns and farms.

Sect. 9. "Provided alway, and be it enacted, That it ſhall be lawful to every perſon or perſons within this realm, keeping a houſhold, to have from time to time ſuch convenient number of ſheep over and above the number expreſſed in this act, as ſhall be neceſſary for the only expences of his houſhold, to be provided, kept and fed in and upon his own lands, or other lands, ſuch as he can or lawfully may have, or provide for, in ferm or otherwiſe; any thing in this preſent act contained to the contrary notwithſtanding; (2) ſo that the ſame houſholder at no *one* time ſhall have or keep, for the expences of his houſhold, or by colour of the ſame, over and above the number to him limited by this act, any number of ſheep more than ſhall ſuffice for the only expences of his houſhold for one year, without fraud or covin; any thing in this preſent act mentioned or expreſſed to the contrary notwithſtanding."

Sheep for the maintenance of his houſe above two thouſand.

Sect. 10. "Be it alſo further enacted by the authority aforeſaid, That no manner of perſon or perſons, of what degree ſoever he or they be, being lord or lords, owner or owners, farmer or farmers, or of *or* in any liberty of fold-courſes, within any town, tything, village or hamlet within any of the counties of *Norfolk* and *Suffolk*, from and after the feaſt of the *Nativity* of our Lord God next coming, ſhall take in farm, for term of years, or otherwiſe, any quillets of lands or paſtures, that is to ſay, any number of acres of land or paſture, appertaining to any other perſon or perſons, lying and being within the limit, extent or precinct of the ſaid liberty of the ſaid fold-courſes; (2) but that they ſhall permit and ſuffer the ſaid perſons, having or being, for time, owner or owners, leſſee or leſſees, of the ſaid quillets, to manure and paſture the ſaid quillets; (3) and alſo to ſuffer the ſheep of the ſaid owner or owners, farmer or farmers of the ſaid quillets, after the rate of the ſame quillets, to go with the flock of the owner, farmer or occupier of the ſaid liberty or liberties of the ſaid fold-courſes, paying the cuſtomary charges for the keeping and feeding of the ſame, after

How fold-courſes in Norfolk ſhall be uſed, and quillets of land.

ter the rate and uſe of the country there commonly uſed, without any interruption therein to be made by the ſaid owner or owners, farmer or formers, or occupiers of the ſaid liberties; (4) upon pain of forfeiture for every time that any ſuch perſon having any ſuch quillet that ſhall be ſo letted or diſturbed of feeding, keeping or paſturing any of his ſheep, to be ſo fed and kept after the rate of *his* ſaid quillet, for every ſuch ſheep *iii. s. iv. d.*"

To which ſort of quillets this ſtatute doth extend, and to which not.

Sect. 11. "Provided alway, That this act, or branch concerning quillets, or any thing therein contained, ſhall not in any wiſe be available to any tenant, owner or occupier of any ſuch quillet or quillets, to claim, have or uſe hereafter any ſuch paſture, or feeding of his ſheep, in or with any ſuch fold-courſes, but only where the tenants, owners and occupiers of any ſuch quillets have had, or might have had heretofore of right and duty, or uſed to have paſture and feeding in the ſaid fold-courſes, by reaſon of their tenures and occupations of the ſame quillet and quillets, and none otherwiſe; (2) and where they have not uſed, ne ought to have any ſheep fed or kept within any ſuch fold-courſes, by reaſon of the ſaid tenures, That the owners or occupiers of ſuch fold-courſes may take ſuch quillets, lying within their ſaid fold-courſes, in farm, agreeing with the owner or occupiers of the ſaid quillets for the ſame."

Six ſcore of ſheep ſhall be accounted an hundred.

Sect. 12. "And foraſmuch as the number of the *C.* of ſheep in every country be not like, in ſome country the great *C.* where ſix ſcore is accounted for the *C.* and ſome country but only five ſcore, it is eft declared by this preſent act, that the number of two thouſand ſheep, limited to every perſon by this act, ſhall be accounted ten *C.* for every thouſand, after the number of the great hundred, and not after the leſs hundred, ſo that every thouſand ſhall contain twelve hundred, after the leſs number of the hundred."

When lambs ſhall be taken for ſheep.

Sect. 13. "It is alſo further provided by the authority aforeſaid, That lambs under the ages of one whole year, and as much as ſhall be from the time of the falling of them unto the feaſt of the *Nativity* of St. *John Baptiſt*, in any year to come, ſhall not be adjudged, ne taken for ſheep, prohibited in this ſtatute; any thing in this act to the contrary notwithſtanding."

No man ſhall take above two farms. 32 H. 8. c. 28.

Sect. 14. "It is alſo further enacted by authority aforeſaid, That no manner perſon, after the ſaid feaſt of the *Nativity* of our Lord, ſhall receive, or take in farm for term of life, years or at will, by indenture, copy of court-roll, or otherwiſe, any more houſes and tenements of huſbandry, whereunto any lands are belonging, in town, village, hamlet or tithing within this realm, above the number of two ſuch holds or tenements; (2) and that no manner perſon ſhall have or occupy any ſuch holds, ſo newly taken, to the number of two, as is before expreſſed, except he or they be dwelling within the ſame pariſhes where ſuch holds be; upon pain of forfeiture for every week that he or they ſhall have, occupy or take any profits of ſuch holds, contrary to this act, *iii. s. iv. d.* The one moiety of which forfeiture to be to the king our ſovereign lord, and the other moiety to the party that will ſue for the ſame in any of the king's courts,

courts, by bill, plaint, information or otherwiſe, within one year next after ſuch contempt and offence committed and done, in the which no eſſoin, protection, ne wager of law ſhall be admitted or allowed."

Sect. 15. "It is alſo further enacted by authority aforeſaid, that the ſtatutes made the fourth year of the noble prince, king *Henry* the ſeventh, and the ſeventh year of the reign of our ſovereign lord the king that now is, concerning the decay of towns, and maintenance of tillage and huſbandry, ſhall be good and effectual in every thing according to the true purport and intent of the ſame; any thing in this preſent act to the contrary notwithſtanding." 4 H. 7. c. 19. 7 H. 8. c. 1.

Sect. 16. "Provided alſo, That it may be lawful to all ſpiritual perſons, and every of them, to keep ſuch and as many ſheep upon their own lands, and after ſuch form and manner, and none otherwiſe, as they might have done afore the making of this act; any thing mentioned in the ſame to the contrary notwithſtanding." Spiritual perſons.

Stat. 3 & 4 *Ed.* 6. *c.* 19. [*A. D.* 1549. *intituled*] "An act for buying and ſelling of rother beaſts and cattle."

"Be it enacted by the authority of this preſent parliament, That no perſon or perſons at any time, from and after the feaſt of the *Annunciation* of our lady next coming, ſhall buy, or commune and conclude to buy any manner of oxen, ſteers, ronts, kine, heifers or calves, but only in open fair or market where the ſame ſhall happen to be brought and put to ſale; (2) and ſhall not ſell the ſame again alive, at and in the market or fair where he bought the ſame, during the time of the ſaid fair or market; (3) upon pain of forfeiture of the double value of ſuch cattle bought or ſold contrary to the tenor of this preſent act." No cattle ſhall be bought but in open fair or market, but by a butcher, or for proviſion of houſehold, &c. Cro. El. 309. Latch 192.

Sect. 2. "Provided alway, and be it further enacted by the authority aforeſaid, That it ſhall be lawful for all and every perſon and perſons, to buy any oxen, ſteers, ronts, kine, heifers and calves, or any of them, out of any open fair or market, for his or their proviſion for their houſhold, teem or dairy, at his or their will and pleaſure, to be employed and ſpent only in keeping and maintenance of his or their houſe, or for their teem or dairy, and not otherwiſe." For what purpoſes cattle may be bought out of a fair or market. Exp.

Sect. 3. "And be it further enacted by the authority aforeſaid, That no perſon being a butcher, and uſing the craft and myſtery of butchery, ſhall at any time after the ſaid feaſt buy any fat oxen, ſteers, ronts, kine, heifers, calves or ſheep, and ſell or cauſe to be ſold the ſame again alive, upon pain of forfeiture of every ſuch ox, ſteer, ront, cow, heifer, calves or ſheep bargained or ſold contrary to the form of this preſent act." A butcher ſhall not buy cattle and ſell them alive.

Sect. 4. "Provided alway, That all and every perſon and perſons being a butcher, and uſing the art and myſtery of butchery, ſhall and may at his and their will and pleaſure buy any fat oxen, ſteers, ronts, kine, heifers, calves and ſheep, or any of them, out of any open fair or market: So that ſuch butcher ſell not, nor cauſe the ſame to be ſold again alive, as is aforeſaid; any thing contained in this act to the contrary notwithſtanding: (2) The one moiety of all which forfeitures to be to our ſovereign lord the

king, his heirs and ſucceſſors, and the other moiety to him or them that will ſue for the ſame in any of the king's courts of record, wherein no wager of law, eſſoin or protection ſhall be allowed for the defendant or defendants. (3) This act to endure to the end of the next parliament. Continued in part by 3 *Car.* 1. *c.* 4. and further continued by 16 *Car.* 1. *c.* 4. and altered by 15 *Car.* 2. *c.* 8. *See this laſt act under* **Butchers.**

By the *ſtat.* 5 & 6 *Ed.* 6. *c.* 14. *ſect.* 9, 10. No perſon ſhall ſell his cattle within five weeks after he bought them; and the juſtices may determine the ſame. See theſe two ſections at large under **Badgers**, p. 194.

Stat. 2 & 3 *Phil. & Ma.* [*A. D.* 1555. *intituled*] "An act for keeping of milch kine, and for breeding and rearing of calves."

"Foraſmuch as of late years a great number of perſons within this realm have laid their lands, farms and paſtures to feeding of ſheep, oxen, runts, ſchrubs, ſteers and heifers, and ſuch other like cattle, having no regard or care to breed and rear up young beaſts and cattle, whereby is grown great ſcarcity of cattle, and victual neceſſary for the ſuſtenance of divers ſorts of people within this realm, and more is like to be, if ſpeedy remedy be not provided:"

By the ſtat. of 7 Jac. 1. c. 8. this ſtatute ſhall extend to grounds hereafter to be enclоſed.

Sect. 2. "It is therefore by the authority of this preſent parliament enacted, That every perſon which, from the feaſt of the *Purification* of our lady next enſuing, ſhall keep or feed above the number of ſixſcore *ſhere* ſheep for the moſt part of the year, upon his or her ſeveral paſtures, lands, feedings or farms apt or meet for milch kine, and wherein no other perſon hath at the making of this preſent act, common for any cattle at any time of the year, ſhall by authority of this act, yearly ſo long as he ſhall keep or feed the ſaid number of ſixſcore ſhere ſheep, for every threeſcore ſhere ſheep ſo kept or fed, keep one milch cow, and ſhall breed and rear up yearly for every ſixſcore ſheep ſo kept as is aforeſaid, one calf; (2) upon pain of forfeiture for every month that any ſuch perſon ſhall not for every threeſcore ſhere ſheep, as is aforeſaid, keep and feed one milch cow, xx s. for every cow ſo not kept: (3) And for lack of rearing and breed of one calf for every ſixſcore ſhere ſheep, to forfeit likewiſe xx s. for every calf ſo not reared and fed."

A cow ſhall be kept for ſixty ſheep, and a calf reared for 120 ſheep.

Sect. 3. "And that every perſon which after the aforeſaid feaſt of the *Purification* of our lady, upon his or her ſeveral paſtures as afore is ſaid, ſhall keep or feed above the number of twenty oxen, runts, ſhrubs, ſteers, heifers or kine, ſhall by authority of this act, for every ten beaſts of the ſaid ſorts ſo kept and fed, keep and nouriſh one milch cow, and breed, rear and waine yearly, and keep for one whole year, one calf for every two milch kine ſo charged to be kept; upon the ſeveral pains and forfeitures afore rehearſed, except the ſaid calf or calves ſhall chance to die within the ſaid year, without covin or fraud thereto added; (2) the one half of which ſaid forfeitures ſhall be to the uſe of our ſovereign lord and lady the king and queen's majeſties; and the other half to the uſe of the party, that within one year after the offence committed will ſue for the ſame in any of the king

A milch cow ſhall be kept for ten beaſts fed, and for two kine a calf reared.

king and queen's majeſties courts of record, or before the juſtices of peace in the ſame ſhire where any ſuch cauſe of forfeiture ſhall be had, at the general ſeſſions (who by authority of this act ſhall have power to hear and determine the ſaid offences) by bill, information, preſentment, action of debt or detinue; in which action or ſuit, no eſſoin, protection, wager of law or licence to the contrary ſhall be allowed."

Sect. 4. "Provided always, That this act, nor any clauſe thereof, ſhall be extended to bind any perſon to keep milch kine, nor yet to breed or rear up calves, as afore is expreſſed, for ſuch ſheep or other beaſts as the ſame perſons ſhall keep or feed, to the intent only to be ſpent in his or their houſe or houſes, without fraud or covin. (2) This act to endure only unto the end of ſeven years next following the feaſt of the *Purification* of our lady aforeſaid, and from thence to the end of the parliament then next following. Made perpetual by 13 *El. c.* 25.

Sheep kept, or beaſts fed to be ſpent in the owner's houſe.

Stat. 7 *Jac.* 1. *c.* 8. [*A. D.* 1609. *intituled*] "An act to enlarge an act of parliament made in the ſecond and third year of king *Philip* and queen *Mary*, intituled, *An act for the keeping of milch-kine, or breeding and rearing of calves.*"

"Whereas in the ſecond and third years of king *Philip* and queen *Mary*, a profitable act was made for the avoiding of the ſcarcity of cattle and victual, intituled, *An act for the keeping of milch-kine, and for the breeding and rearing of calves*; (2) which act being then made only to continue to the end of the next ſeſſion of parliament, was found ſo neceſſary for the good of the commonwealth, that after many continuances of it by ſeveral parliaments, it was at length, in the thirteenth year of the reign of our late queen *Elizabeth* of happy memory, made perpetual: (3) Becauſe the ſaid act hath not produced ſo good effect as was expected, in reſpect it did and doth extend only to ſuch paſture grounds as were incloſed before the ſaid act, and wherein no perſon, at the making of the ſaid act, had common for any cattle at any time of the year, and not to ſuch paſture grounds as ſithence have been converted from tillage, and incloſed, or taken out of commons, and incloſed, whereas in all equity and conſcience, many of the ſaid late incloſures deſerve no way to be kept and enjoyed with more liberty, than the ſaid former and antient incloſures."

2 & 3 P. & M. c. 3.

13 Eliz. c. 25.

Sect. 2. "Be it therefore enacted by the king's moſt excellent majeſty, the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That the ſaid former act, and the pains and penalties therein contained, ſhall, from and after the feaſt of ſaint *Michael* the archangel now next enſuing, be extended and conſtrued, taken, expounded and adjudged to extend as fully to all intents, conſtructions and purpoſes, with the ſame proviſoes, and in like manner, to all and every the grounds apt and meet for milch-kine, ſince the making of the ſaid act, incloſed, or hereafter to be incloſed, and not to be laid open to common at any time of the year, and to the occupiers thereof, as to the grounds before the ſaid act made ſeveral, and wherein

The ſtatute of 2 & 3 P. & M. c. 3. ſhall be extended to grounds ſince incloſed or hereafter to be incloſed.

none had intereſt of common at the time of making the ſaid act, and to the occupiers thereof, and as if the ſaid grounds ſo lately incloſed, and hereafter to be incloſed and made ſeveral, had been ſo incloſed, and held ſeveral at the time of the making the ſaid act, and as if no perſon or perſons, other than the owners thereof, then had intereſt of common therein; any word, ſentence or clauſe in the ſaid former act to the contrary in any wiſe notwithſtanding."

By *ſtat.* 3 *Car.* 1. *c.* 1. No drover with any cattle ſhall travel on the Lord's day, on pain of twenty ſhillings. *See the act at large under* Butchers, *page* 489.

Stat. 18 *Car.* 2. *c.* 2. [*A. D.* 1666. *intituled*] "An act againſt importing cattle from *Ireland*, and other parts beyond the ſeas, and fiſh taken by foreigners."

15 Car. 2. c. 7.

"Whereas by an act of this preſent parliament, intituled, *An act for the encouragement of trade*, amongſt other things, ſome proviſion was made for the preventing of coming in of vaſt numbers of cattle, whereby the rents and values of the land of this kingdom were much fallen, and like daily to fall more, to the great prejudice, detriment and impoveriſhment of this kingdom; which nevertheleſs hath by experience been found to be ineffectual; and the continuance of any importation, either of the lean or fat cattle, dead or alive, herein after ſpecified, not only unneceſſary, but very deſtructive to the welfare of this kingdom: (2) Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, That ſuch importation, from and after the ſecond day of *February* in this preſent year one thouſand ſix hundred ſixty and ſix, is a publick and common nuſance, and ſhall be ſo adjudged, deemed and taken to be to all intents and purpoſes whatſoever. (3) And that if any great cattle, ſheep or ſwine, or any beef, pork or bacon (except for the neceſſary proviſion of the reſpective ſhips or veſſels in which the ſame ſhall be brought, not expoſing the ſame, or any part thereof to ſale) ſhall from and after the ſaid ſecond day of *February*, by any wiſe whatſoever, be imported or brought from beyond ſeas into this kindom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*; that then it ſhall and may be lawful for any conſtable, tithingman, headborough, churchwardens or overſeers of the poor, or any of them, within their reſpective liberties, pariſhes or places, to take and ſeize the ſame; (4) and keep the ſame during the ſpace of eight and forty hours in ſome publick or convenient place where ſuch ſeizure ſhall be made; within which time if the owner and owners, or any for them or him, ſhall make it appear unto ſome juſtice of the peace of the ſame county where the ſame ſhall be ſo ſeized, by the oath of two credible witneſſes; which oath the ſaid juſtice of peace is hereby impowered and required to adminiſter; That the ſame were not imported from *Ireland*, or from any other place beyond the ſeas, not herein after excepted, after the ſaid ſecond day of *February*, then the ſame,

Importation of cattle a common nuſance.

Enforced by 20 Car. 2. c. 7. ſect. 3.

Importation of bacon provided for by 5 & 6 W. & M. c. 2. ſect. 4.

The penalty.

ſame, upon the warrant of ſuch juſtice of peace, ſhall be delivered without delay: (5) But in default of ſuch proof and warrant, then the ſame to be forfeited: One half thereof to be diſpoſed to the uſe of the poor of the pariſh where the ſame ſhall be ſo found or ſeized; the other half to be to his or their own uſe that ſhall ſo ſeize the ſame."

Encouragement of fiſhery. Enforced by 1 Geo. 1. ſtat. 2. c. 18. ſ. 2.

Sect. 2. "And for the better encouragement of the fiſhery of this kingdom, be it further enacted by the authority aforeſaid, That if any ling, herring, cod or pilchard, freſh or ſalted, dried or bloated, or any ſalmons, eels or congers taken by any foreigners, aliens to this kingdom, ſhall be imported, uttered, ſold or expoſed to ſale in this kingdom: That then it ſhall and may be lawful for any perſon or perſons to take and ſeize the ſame; the one half thereof to be diſpoſed of to the uſe of the poor of the pariſh where the ſame ſhall be ſo found or ſeized; the other half to his or their own uſe, which ſhall ſo ſeize the ſame."

Iſle of Man.

Sect. 3. "Provided always, That nothing in this act ſhall be conſtrued to hinder the importation of cattle from the *Iſle of Man* in this kingdom of *England*, ſo as the number of the ſaid cattle do not exceed ſix hundred head yearly: (2) And that they be not of any other breed than of the breed of the *Iſle of Man*; (3) and that they be landed at the port of *Cheſter*, or ſome of the members thereof, and not elſewhere."

Sect. 4. "This act to continue until the end of ſeven years, and from thence to the end of the firſt ſeſſion of the next parliament. Made perpetual by 32 *Car.* 2. *c.* 2. *ſect.* 2.

Stat. 20 *Car.* 2. *c.* 7. [*A. D.* 1668. *intituled*] "An additional act againſt the importation of foreign cattle."

18 Ca. 2. c. 2.

"Whereas by an act of this preſent parliament, intituled, *An act againſt importing cattle from Ireland, and other parts beyond the ſeas, and fiſh taken by foreigners*; amongſt other things, proviſion was made againſt importation of cattle from parts beyond the ſeas: And it was thereby enacted, That ſuch importation from and after the ſecond day of *February*, which was in the year one thouſand ſix hundred ſixty-ſix, was a publick nuſance, and ſhould be ſo adjudged, deemed and taken to all intents and purpoſes; (2) and that if any great cattle, ſheep or ſwine, or any beef, pork or bacon, (except for the neceſſary proviſion of the reſpective ſhips or veſſels in which the ſame ſhould be brought, not expoſing the ſame to ſale) ſhould from and after the ſecond day of *February*, by any wiſe whatſoever, be imported or brought from beyond the ſeas into this kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, That then it ſhould and might be lawful for any conſtable, tithingman, headborough, church-warden, or overſeers of the poor, or any of them, within their reſpective liberties, pariſhes or places, to take and ſeize the ſame; (3) and keep the ſame, during the ſpace of eight and forty hours, in ſome publick or convenient place where ſuch ſeizure ſhould be made; within which time, if the owner or owners, or any for them or him, ſhould make it appear unto ſome juſtice of the peace of the ſame county where the ſame ſhould ſo be ſeized, by the oath of two credible witneſſes

Importation of cattle from beyond ſea a nuſance.

witneſſes, that the ſame were not imported from *Ireland*, or from any other place beyond the ſeas not therein after excepted, after the ſaid ſecond day of *February*, then the ſame, upon the warrant of ſuch juſtice of peace, ſhould be delivered without delay; but in default of ſuch proof and warrant, then the ſame to be forfeited; one half thereof to be diſpoſed to the uſe of the poor of the pariſh where the ſame ſhall be ſo found or ſeized, the other to be to his or their own uſe that ſhould ſeize the ſame."

Sect. 2. "Notwithſtanding which act, and the good proviſion thereby, great number of cattle, ſheep and ſwine, and great quantities of beef, pork and bacon, have ſince the time limited by the ſaid act been import-
8 Ca. 2. c. 1. ed from *Ireland*, and other places beyond the ſeas, as well in foreign as *Engliſh* ſhips and veſſels, contrary to the good intent of the ſaid act, and in continuance of the ſaid nuſance, and in high contempt of the authority of parliament: (2) And divers church-wardens, conſtables, tithingmen and overſeers of the poor, living near the ſea, for their own private lucre, having combined with the owners of ſuch cattle, ſheep, ſwine, beef, pork and bacon imported, as aforeſaid, or with their agents, have colourably ſeized, and afterwards privately and fraudulently ſold the ſame at very low and inconſiderable rates, to the ſaid owners or their agents: (3) And other of the ſaid officers, who have diſcharged their duties in the execution of the ſaid act, have been moleſted therefore, and ſeveral actions, ſuits, plaints and informations have been brought and preſented againſt ſome of them in counties and places far diſtant from their habitations, to their great charge and diſcouragement. (4) For the vindication therefore of the authority of parliament from ſuch bold affronts, and the indemnifying as well of ſuch officers, who have faithfully endeavoured the execution of the ſaid act (although they have not ſtrictly purſued the ſame in every circumſtance) as of ſuch other perſon and perſons who have acted in their aid and aſſiſtance, and for the better and further ſuppreſſion of the ſaid nuſance; (5) Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That all and every conſtable, tithingman, headborough, church-warden, and overſeer of the poor, and every other perſon or perſons who have acted in, or concerning the ſeizure, keeping, detaining or diſpoſing of any cattle, ſheep, ſwine, beef, pork or bacon, imported contrary to the ſaid act, after the ſaid ſecond day of *February*, ſhall be and are hereby ſaved harmleſs, and indemnified in that behalf, againſt the owner or owners thereof at the time of ſuch importation, their executors and adminiſtrators, and every other perſon and perſons claiming from, by or under their gift, grant or other diſpoſition; and againſt all and every perſon and perſons, to whom any fraudulent ſale hath been made after ſuch importation, as aforeſaid, and their and every of their executors and adminiſtrators.

All officers who have ſeized any imported cattle, ſaved harmleſs.

Importation of bacon provided for by 5 & 6 W. & M. c. 2. ſect. 4.

Sect. 3. "And it is provided, and further enacted, That not only the conſtables and officers above-named, but every or any other inhabitant or inhabitants of or within the liberties, pariſhes, and places where ſuch importation

Any perſon may ſeize imported cattle, and deliver

portation ſhall be made, ſhall and may take and ſeize the cattle and goods ſo imported, and after ſuch ſeizure ſhall forthwith deliver or cauſe them to be delivered to the conſtable, tithingman, headborough, church-warden, or overſeers of the poor, or any of them within the reſpective liberties, pariſhes and places aforeſaid, to be kept, ordered, and diſpoſed in the manner, and to the uſes and purpoſes in this act, and in the ſaid recited act, or either of them mentioned and directed. them to the officer.

Sect. 4. " And it is further enacted, That if no ſeizure at all ſhall be made by the officers or inhabitants, nor any of them, within the liberty, pariſh, or place where ſuch cattle or goods, as aforeſaid, ſhall be firſt imported, then ſuch liberty, pariſh, and place, and the inhabitants thereof, neglecting to make ſuch ſeizure, for every default ſhall forfeit the ſum of one hundred pounds, which ſhall be imployed for the uſe of the houſe of correction within the county or liberty where ſuch default of ſeizure ſhall be; (2) and the monies ſo forfeited, and other the penalties and forfeitures which are to accrue to the poor by virtue of this act, and the ſaid recited act, or either of them, ſhall be accounted for to ſuch perſons, at ſuch times, and in ſuch manner, as the overſeers of the poor are appointed to account by the ſtatute made in the three and fortieth year of the reign of queen *Elizabeth*, chapter the ſecond. The forfeiture of ſuch as neglect to ſeize. 43 El. c. 2.

Sect. 5. " And be it further enacted by the authority aforeſaid, That every ſhip or veſſel, with all her tackle and apparel, in which any great cattle, ſwine, ſheep, beef, pork or bacon, from and after the four and twentieth day of *March* in the year of our lord one thouſand ſix hundred ſixty and ſeven, ſhall be imported from *Ireland*, or any other parts beyond the ſeas, into the kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, and out of which they or any of them ſhall be put on ſhore there, ſhall be forfeited: (2) And that it ſhall and may be lawful to and for any perſon or perſons, within the ſpace of one year after ſuch importation, to take and ſeize the ſame ſhip or veſſel, with all her tackle and apparel, and to make ſale thereof to the beſt advantage; and that one half of the monies to be raiſed by ſuch ſale, ſhall be diſpoſed of to the uſe of the poor of the pariſh where the ſame ſhall be ſo ſeized, the other half to be to his or their uſe that ſhall ſo ſeize the ſame: (3) And alſo that it ſhall and may be lawful to and for any juſtice of peace of the county, or chief officer of the port-town, in or near the place where ſuch importation ſhall be made, or where any of the cattle, ſheep, ſwine, beef, pork or bacon ſo imported ſhall be driven or brought, by warrant under the hand and ſeal of ſuch juſtice of the peace, or chief officer, to cauſe to be apprehended all and every the maſters, mariners, and ſeamen, having charge of, or belonging to ſuch ſhip or veſſel in which ſuch importation ſhall be made; (4) and all and every other perſon and perſons acting or imployed in the landing, driving, attending on, or taking care or charge of the ſaid cattle, ſheep, ſwine, beef, pork or bacon imported, as aforeſaid, and them to commit to the common gaol of the ſaid county, there to remain without bail or mainprize, for the ſpace of three months. Ships bringing cattle, &c. from beyond ſea, ſhall be forfeited, ſeized and ſold; The money raiſed thereby, one half to the poor, the other to the informer or ſeizor. The ſeamen to be apprehended, and all others concerned, and ſent to the common gaol.

Sect. 6. " And be it further enacted and declared by the authority aforeſaid, That whenſoever, and as often as it ſhall happen, either through any fraudulent If any officer neglect to ſeize, another

may take them and have the one half, giving the other to the poor.

fraudulent agreement or unfaithful connivance of any conſtable, headborough, tithingham, church-warden, or overſeer of the poor, or that it ſhall happen any otherwiſe howſoever, that any great cattle, ſheep, ſwine, beef, pork or bacon, after the firſt ſeizure of them, or any of them, by virtue of the aforeſaid act, ſhall be driven, brought, carried into, or found in any other pariſh or place, than where the ſame ſhall be firſt ſeized, as aforeſaid; that then and ſo often, and from time to time, it ſhall and may be lawful to and for the conſtable, tithingman, headborough, church-warden, or overſeer of the poor of every or any ſuch other pariſh or place where ſuch great cattle, ſheep, ſwine, beef, pork or bacon, ſhall be brought, driven or carried into, or found, as aforeſaid, to ſeize, take and diſpoſe the ſame, and every or any of them as forfeited, the one moiety thereof to the uſe of the poor of ſuch other pariſh or place where ſuch ſeizure ſhall be made, the other to the uſe of ſuch officer or officers who ſhall ſeize the ſame, as aforeſaid; any other or former ſeizure or ſeizures in any other pariſh or pariſhes, place or places, notwithſtanding.

Trial in the county where the cauſe of action ariſes.

Sect. 7. "And be it further enacted by the authority aforeſaid, That if any action, bill, plaint, ſuit or information is or ſhall be commenced, or proſecuted againſt any perſon or perſons, for any ſeizure, or other thing made or done, or to be made or done, by virtue or colour of this, or the aforeſaid act; and upon the trial of ſuch action, bill, plaint, ſuit or information, it ſhall not be proved to the jury that ſhall try the ſame, that the cauſe of ſuch action, bill, plaint, ſuit or information did ariſe within ſuch county where ſuch action, plaint, ſuit or information is laid and tried, the defendant and defendants ſhall be found not guilty, without having regard to any evidence given by, or for the plaintiff, informer or proſecutor.

Sect. 8. "And be it further enacted by the authority aforeſaid, That if any action, bill, plaint, ſuit or information hath been, or ſhall be commenced or proſecuted againſt any perſon or perſons, for any ſeizure or other thing done or made, or to be done or made in purſuance or execution of this, or the aforeſaid act; ſuch perſon or perſons ſo ſued in any court whatſoever, may plead the general iſſue, and give this and the aforeſaid act, and the ſpecial matter in evidence for their excuſe or juſtification: (2) And if the plaintiff or proſecutor ſhall become nonſuit, or forbear proſecution, or ſuffer diſcontinuance, or if a verdict paſs againſt him in any ſuch action, bill, plaint, ſuit or information, as aforeſaid, the defendants ſhall have treble coſts, for which they ſhall have the like remedy, as in any caſe where coſts by the law are given to the defendant.

General iſſue.

Defendant to have treble coſts.

Proviſo to import cattle from the iſle of Man.

Sect. 9. "Provided always, That nothing in this act ſhall be conſtrued to hinder the importation of cattle from the iſle of *Man* into this kingdom of *England*, ſo as the number of the ſaid cattle do not exceed ſix hundred head yearly, and that they be not of any other breed than of the breed of the iſle of *Man*, and that they be landed at the port of *Cheſter*, or ſome of the members thereof, and not elſewhere.

Confederacy to elude this acts incurs a

Sect. 10. "And it is laſtly enacted, That if any perſon or perſons ſhall wilfully and fraudulently conſpire, confederate, or agree together, to avoid or

or evade the ſeizures or forfeitures upon importation of cattle or goods in this preſent act particularly ſpecified, and the ſame ſhall put in execution; then every ſuch perſon and perſons, being thereof lawfully indicted or preſented within one year next after ſuch offence by him or them committed, and being thereof lawfully convicted or attainted at any time after, according to the laws of this realm, ſhall incur the dangers, penalties, pains and forfeitures contained and provided in and by the ſtatute of proviſion and *præmunire*, made in the ſixteenth year of the reign of king *Richard* the ſecond." *Præmunire.* 16 R. 2. c. 5.

By *Stat.* 22 & 23 *Car.* 2. *c.* 7. Cutting, maiming, wounding and killing of horſes, ſheep, beaſts and other cattle, is felony. *See this act at large under title* Burning, *page* 478.

Stat. 32 *Car.* 2. *c.* 2. [*A. D.* 1680. *Intituled*] "An act prohibiting the importation of cattle from *Ireland*."

"Whereas an act of parliament was made in the eighteenth year of the reign of our ſovereign lord the king that now is, intituled, "An act againſt importing cattle from *Ireland*, and other parts beyond the ſeas, and fiſh taken by foreigners;" which was to continue until the end of ſeven years, and from thence to the end of the firſt ſeſſion of the next parliament, which is now expired: A recital of 18 Car. 2. c. 2.

Sect. 2. "And foraſmuch as by long experience the ſaid law hath been found to be very beneficial to this kingdom, (2) Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That the ſaid act, and every clauſe, article, and thing therein contained, together with the additions and alterations herein after mentioned and expreſſed, ſhall from and after the ſecond day of *February*, which ſhall be in the year of our lord God one thouſand ſix hundred and eighty, be revived, continue and remain, and is hereby revived and continued in force, to all intents, conſtructions and purpoſes for ever. The benefit of it. That 18 Car. 2. c. 2. be revived and continued for ever.

Sect. 3. "And be it further enacted by the authority aforeſaid, That not only the conſtables, officers, and inhabitants mentioned in the aforeſaid recited act, but any and every other perſon and perſons whatſoever, ſhall and may take and ſeize, in any place or places whatſoever, the cattle and goods imported contrary to the ſaid recited act; (2) and that all and every ſuch perſon and perſons, that ſhall ſeize as aforeſaid, ſhall from time to time have the benefit and advantage hereafter given by this act to any ſeizor or ſeizors whatſoever. Not only officers, but all perſons may ſeize Iriſh cattle and goods imported. All ſeizors to have benefit.

Sect. 4. "And to prevent all fraudulent ſeizures, ſales and compoſitions, to be made by any perſon or perſons whatſoever, in any pariſh or place whatſoever, where any great cattle, ſheep or ſwine ſhall be imported or found contrary to this or the act aforeſaid, and to make the prohibitions therein more effectual; To prevent fraudulent Sales and compoſitions.

Seizor ſhall cauſe the cattle to be killed. Hides and tallow to be the ſeizors, the reſt to be diſtributed to the poor by the church-wardens, &c.

Sect. 5. "Be it enacted by the authority aforeſaid, That all and every the reſpective ſeizor or ſeizors of ſuch cattle, ſheep or ſwine, ſhall within ſix days after conviction and forfeiture thereof, cauſe the ſaid cattle, ſheep and ſwine to be killed; (2) and the hides and tallow of ſuch great cattle, ſheep and ſwine, ſhall be and remain to the uſe of the ſaid ſeizor or ſeizors, and the remainder of the ſaid great cattle, ſheep and ſwine ſhall be forthwith diſtributed amongſt the poor of the ſaid pariſh, by the church-wardens and overſeers of the poor there, or ſome of them, upon notice thereof to be given them, or any of them by ſuch ſeizor or ſeizors, as aforeſaid; any thing in the ſaid former law, or any other law, to the contrary notwithſtanding."

Seizors, churchwardens and overſeers on neglect forfeit 40s. for each great cattle, and 10s. for each ſheep or ſwine. To be levied by diſtreſs and ſale of chattels by warrant of any juſtice, &c.

Sect. 6. "And be it further enacted, That in caſe the ſaid ſeizor or ſeizors, or the churchwardens and overſeers of the poor, ſhall fail in their reſpective duties, in the execution of this act, they and every of them reſpectively, ſhall forfeit the ſum of forty ſhillings for every one of the great cattle, and ten ſhillings for every ſheep or ſwine, which ſhould have been killed and diſtributed, as aforeſaid; one moiety thereof to the poor of the ſaid pariſh, and the other moiety to the informer; (2) The ſame to be levied by diſtreſs and ſale of the goods and chattels of the perſon or perſons ſo offending, by warrant under the hand and ſeal of any juſtices of the peace of the ſaid county or place where the ſaid offence ſhall be committed, upon confeſſion of the party, view of the ſaid juſtice, or oath thereof made before ſuch juſtice by one or more credible witneſs or witneſſes, other than the informer: which oath the ſaid juſtice hath hereby power to adminiſter, rendering the overplus to the owners thereof, neceſſary charges of diſtraining being firſt deducted. (3) And for want of ſuch diſtreſs, the ſaid offender or offenders to be committed to the common gaol of the ſaid county or place, there to remain for the ſpace of three months without bail or mainprize."

For want of diſtreſs, the party to be impriſoned without bail three months.

Nothing herein to hinder importation of ſtock-fiſh and eels.

Any perſon may import ſtock-fiſh and live eels.

Sect. 7. "Provided always, and be it further enacted by the authority aforeſaid, That neither this act, nor any other act whatſoever hereafter made, ſhall either hinder or be conſtrued to extend to hinder the importation of ſtock-fiſh or live eels into this kingdom of *England*; (2) but that it ſhall and may be lawful to and for all and every perſon and perſons whatſoever, to import into this kingdom of *England* any ſtock fiſh or live eels as aforeſaid; any thing in this act, or any other law, ſtatute, uſage or cuſtom to the contrary in any wiſe notwithſtanding."

Altered as to foreigners, by 1 Geo. 1. ſtat. 2. c. 18. ſect. 1. Want of ſufficient proviſion againſt importation of mutton and lamb. No mutton or

Sect. 8. "And whereas the preſent laws do not ſufficiently provide againſt the importation of mutton and lamb out of *Ireland*, and other parts beyond the ſeas into this kingdom, but that great quantities thereof are daily imported and ſold, to the great loſs and prejudice of this kingdom; (2) Be it therefore enacted by the authority aforeſaid, That from and after the ſaid ſecond day of *February*, no mutton or lamb ſhall be imported into this kingdom from the kingdom of *Ireland* or any foreign parts: (3) And all mutton and lamb imported from *Ireland*, or beyond the ſeas, or that ſhall be expoſed to ſale within this kingdom, ſhall be ſubject to the

like seizures, and the importers and sellers thereof respectively to the like penalties, as are provided and appointed in any former law against any importer or seller, or importation of any beef, pork or bacon, from the kingdom of *Ireland*, or any foreign parts; any thing in this or any former law or statute to the contrary notwithstanding."

Lamb shall be imported. Mutton or lamb imported or exposed to sale, subject to former penalties.

Sect. 10. "And for the more effectual execution of this and the aforesaid act, (2) Be it further enacted by the authority aforesaid, That if any great cattle, sheep or swine shall be once or oftner seized in pursuance of this or the aforesaid act, and afterwards either by permission, connivance, negligence or otherwise shall be removed into and found alive in any parish or place within the kingdom of *England*, dominion of *Wales* or town of *Berwick* upon *Tweed*, other than such parish or place wherein they shall have been respectively seized, That then the said cattle, sheep and swine shall be liable to like seizure, and the seizor, and poor of the parish or place have like benefit and advantage, and the cattle, sheep and swine be forfeited, and the proof be incumbent upon the owner, as if such cattle had never before been seized."

For execution of 18 Car. 2. c. 2. seizure to be in any parish into which cattle remove.

Sect. 11. "And whereas divers persons, on purpose to discourage others from making seizure of *Irish* cattle, have intermixed some few *English* or other cattle in droves of *Irish* cattle, and so created many vexatious and chargeable suits against those that have seized *Irish* cattle in pursuance of the aforesaid act; (2) Be it further enacted by the authority aforesaid, That if any *English* or other cattle driven or intermixed with *Irish* cattle shall be seized together with them, such cattle so intermixed and seized shall be deemed *Irish* cattle, and shall be subject to like forfeiture, and be ordered and disposed of in all respects as if they were *Irish* cattle, and imported contrary to this and the aforesaid act."

Fraud in intermixing droves.

English cattle driven or intermixed with Irish, to be seized as Irish.

Sect. 12. "Provided that nothing in this act shall be construed to extend to the forfeiture or seizing any cattle, that are or shall be in *England* before the said second day of *February*."

Not to seize cattle in England before Feb. 2. 1680.

By *Stat.* 9 *Geo.* 1. *c.* 22. maliciously killing or wounding cattle is felony without clergy. *See this act at large under* Black-Act, *page* 347.

Stat. 14 *Geo.* 2. *c.* 6. [*A. D.* 1741. *intituled*] "An act to render the laws more effectual for preventing the stealing and destroying of sheep, and other cattle."

Preamble.

"Whereas divers evil-disposed persons have of late, more generally and frequently than was ever known before, made it their practices secretly in the night-time to drive away and steal great numbers of sheep, and likewise secretly in the night-time to kill great numbers of sheep, and to strip off their skins, and then steal the carcasses of the sheep so killed, leaving their skins behind to prevent discoveries; and also in like manner to kill great numbers of sheep, and then cut open the sheep so killed, and take out and steal their inward fat, leaving their carcasses behind to prevent being

ing diſcovered; by which wicked practices many of his majeſty's good ſubjects have been very greatly injured in their properties, and put to very great charges in having their ſheep and other cattle watched: And whereas the laws in being have not proved effectual to prevent the increaſe of the ſaid wicked practices; Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons ſhall, at any time from and after the firſt day of *May* in the year of our lord one thouſand ſeven hundred and forty-one, feloniouſly drive away, or in any other manner feloniouſly ſteal one or more ſheep or other cattle of any other perſon or perſons whatſoever, or ſhall wilfully kill one or more ſheep or other cattle of any other perſon or perſons whatſoever, with a felonious intent to ſteal the whole carcaſe or carcaſes, or any part or parts of the carcaſe or carcaſes of any one or more ſheep or other cattle that ſhall be ſo killed, or ſhall aſſiſt or aid any perſon or perſons to commit any ſuch offence or offences; that then the perſon or perſons guilty of any ſuch offence, being thereof convicted in due form of law, ſhall be adjudged guilty of felony, and ſhall ſuffer death as in caſes of felony, without benefit of clergy."

Sheepſtealing, or ſtealing any part of them, made felony, without benefit of clergy.

Reward for taking and convicting ſheep-ſtealers.

Sect. 2. "And for the encouragement of ſuch perſons as ſhall vigorouſly endeavour to diſcover, apprehend and proſecute ſuch offenders as aforeſaid; Be it further enacted by the authority aforeſaid, That from and after the firſt day of *May* one thouſand ſeven hundred and forty-one, all and every perſon and perſons, who ſhall apprehend and proſecute to conviction, any offender or offenders guilty of any of the offences herein before mentioned, ſhall have and receive, as a reward upon every ſuch conviction, the ſum of ten pounds, to be paid within one month after ſuch reſpective conviction, by the ſheriff or ſheriffs of the county where ſuch offence or offences ſhall be committed and done (without any deduction whatſoever) to the perſon or perſons ſo apprehending and proſecuting ſuch offender or offenders, he or they tendering a certificate to the ſheriff or ſheriffs, ſigned by the judge or judges, before whom any ſuch offender ſhall be convicted, certifying ſuch conviction, and where the offence was committed, and that ſuch offender or offenders was or were apprehended and proſecuted by the perſon or perſons claiming the ſaid reward; which certificate the ſaid judge or judges are hereby authorized and required to ſign accordingly, before the end of the ſame ſeſſions or aſſizes, at which ſuch reſpective conviction ſhall happen to be; and in ſuch certificate ſhall direct and appoint (in caſe more than one perſon ſhall claim a right to the ſaid reward) what ſhare and proportion thereof ſhall be paid to each claimant; and if it ſhall happen that any ſuch ſheriff or ſheriffs ſhall die or be removed before the expiration of one month after ſuch conviction, and demand made of the ſaid reward (the ſame not being paid as aforeſaid), that then the next ſucceeding ſheriff or ſheriffs ſhall pay the ſame within one month after demand, and certificate brought as aforeſaid; and if default of payment of the ſaid ſum or ſums of money ſhall happen to be made by any ſheriff or ſheriffs, ſuch ſheriff or ſheriffs ſo making default ſhall forfeit to

Sheriff on default of pay-

the perſon or perſons, to whom ſuch money is due as aforeſaid, double the ſum or ſums of money he or they ought to have paid, to be recovered by him or them, or his or their executors or adminiſtrators, in any of his majeſty's courts of record at *Weſtminſter*, by action of debt, bill, plaint or information, wherein but one imparlance, and no eſſoin, protection or wager of law ſhall be allowed, with treble coſts of ſuit by him or them expended in the recovery of the ſame." ment, to forfeit double the ſum. Treble coſts.

Sect. 3. "And be it further enacted by the authority aforeſaid, That all ſheriffs, their executors and adminiſtrators, upon producing ſuch reſpective certificates, and the receipts for the monies paid by them in purſuance of this act, ſhall be allowed, and are hereby impowered to deduct, upon their accounts, all monies, other than double the ſum or ſums of money and treble coſts of ſuit, which they ſhall diſburſe as aforeſaid; and that if upon account of any ſheriff or ſheriffs, there ſhall not be money ſufficient in the hands of ſuch ſheriff or ſheriffs, to reimburſe him or them ſuch monies paid by him or them by virtue of this act, that then the ſheriff or ſheriffs, having ſo paid the ſaid monies, ſhall have the ſame repaid by the lord treaſurer, or commiſſioners of his majeſty's treaſury for the time being, out of the revenue of the crown, upon certificate from the clerk of the pipe to that effect." Sheriffs how to be repaid.

Stat. 15 *Geo.* 2. *c.* 34. [*A. D.* 1741. *intituled*] "An act to explain an act made in the fourteenth year of the reign of his preſent majeſty," intituled, *An act to render the laws more effectual for preventing the ſtealing and deſtroying of ſheep and other cattle.*"

"Whereas by an act made in the fourteenth year of the reign of his preſent majeſty, intituled, *An act to render the laws more effectual for preventing the ſtealing and deſtroying of ſheep and other cattle*, it was enacted, That if any perſon or perſons ſhould, at any time from and after the firſt day of *May* in the year of our Lord one thouſand ſeven hundred and forty-one, feloniouſly drive away, or in any other manner feloniouſly ſteal, one or more ſheep or other cattle of any other perſon or perſons whatſoever, or ſhould wilfully kill one or more ſheep or other cattle of any other perſon or perſons whatſoever, with a felonious intent to ſteal the whole carcaſe or carcaſes, or any part or parts of the carcaſe or carcaſes of any one or more ſheep or other cattle that ſhould be ſo killed, or ſhould aſſiſt or aid any perſon or perſons to commit any ſuch offence or offences, that then the perſon or perſons guilty of any ſuch offence, being thereof convicted in due form of law, ſhould be adjudged guilty of felony, and ſhould ſuffer death as in caſes of felony without benefit of clergy: And whereas it is doubtful to what ſorts of cattle beſides ſheep the ſaid act was meant to extend; Be it therefore enacted and declared by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That the ſaid act was meant and intended, and ſhall be conſtrued, deemed and taken to extend to any bull, cow, ox, ſteer, bullock, heifer, calf and lamb, as well as ſheep, and to no other cattle whatſoever." 14 Geo. 2. c. 6. To what ſorts of cattle the act ſhall extend.

By

By *Stat.* 31 *Geo.* 2. *c.* 40. Saleſmen and others employed to ſell cattle in *London*, or within the weekly bills of mortality, are not to buy and ſell on their own account, on penalty of forfeiting double the value. *See this act at large under title* Pay.

Stat. 5 *Geo.* 3. *c.* 10. [*A. D.* 1765. *Intituled*] "An act to permit the free importation of cattle from *Ireland*."

Preamble, Act 32 Geo. 2.

"Whereas an act, paſſed in the thirty-ſecond year of the reign of his late majeſty king *George* the ſecond, intituled, "An act to permit the free importation of cattle from *Ireland* for a limited time" *is near expiring*; Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the end of this ſeſſion of parliament, the free importation of all ſorts of cattle into this kingdom from *Ireland* ſhall be and is hereby permitted, allowed and authorized, for and during the ſpace of ſeven years, and from thence to the end of the then next ſeſſion of parliament; and that all perſons ſhall be and are hereby exempted, freed and diſcharged from the payment of all ſubſidies, cuſtoms, rates, duties, or other impoſitions, and alſo from all penalties, forfeitures, payments, and puniſhments, for or on account of importing or bringing cattle into this kingdom from *Ireland*; any act or acts of parliament to the contrary notwithſtanding.

The free importation of cattle from Ireland allowed for the term of 7 years; without payment of duties.

Sect. 2. "And be it further enacted by the authority aforeſaid, That if any action or ſuit ſhall be commenced againſt any perſon or perſons for any thing done in purſance of this act, the defendant or defendants, in ſuch action or ſuit, may plead the general iſſue, and give this act and the ſpecial matter in evidence at any trial to be had thereupon, and that the ſame was done in purſuance and by the authority of this act; and if it ſhall appear ſo to have been done, the jury ſhall find for the defendant or defendants; and if the plaintiff ſhall be nonſuited, or diſcontinue his action after the defendant or defendants ſhall have appeared, or if judgment ſhall be given upon any verdict or demurrer againſt the plaintiff, the defendant or defendants ſhall and may recover treble coſts; and have the like remedy for the ſame, as any defendant or defendants hath or have in other caſes by law.

General iſſue.

Treble coſts.

By *Stat.* 5 *Geo.* 3. *c.* 43. Beſtials may be freely imported from the *Iſle of Man.*

Certiorari.

CERTIORARI is an original writ iſſuing out of Chancery or the King's Bench, directed in the king's name to the judges or officers of inferior courts, commanding them to return the record of a cauſe depending before them; to the end the party may have the more ſure and ſpeedy juſtice before him or ſuch other juſtices as he ſhall aſſign to determine the ſame *F. N. B.* 242.

The court of King's Bench has a ſuperintendancy over all courts of an inferior criminal juriſdiction, and may by the plentitude of its power award a certiorari, to have any indictment removed and brought before itſelf; and where ſuch certiorari is allowable, ought of right to award it at the inſtance of the king, becauſe every indictment is the ſuit of the king, and he has a prerogative of ſuing in what court he pleaſes. 1 *Vent.* 63. 1 *Mod.* 4. 2 *Hawk. P. C.* 287.

But though the court is to grant it at the ſuit of the king, yet it has a diſcretionary power in granting or refuſing it at the ſuit of the defendant, and agreeably hereto it is laid down as a general rule, That the court will never grant it for the removal of an indictment before juſtices of gaol-delivery, without ſome ſpecial cauſe; as where there is juſt reaſon to apprehend that the court below may be unreaſonably prejudiced againſt the defendant; or where there is ſo much difficulty in the caſe, that the judge below deſires that it may be determined in the King's Bench; or where the king himſelf gives ſpecial direction that the cauſe ſhall be removed; or where the proſecution appears to be for a cauſe not properly criminal. 2 *Hawk. P. C.* 287.

Neither will the court of King's Bench ordinarily, at the prayer of the defendant, grant a certiorari for the removal of an indictment of perjury, or forgery, or other heinous miſdemeanor; for ſuch crimes deſerve all poſſible diſcountenance, and the certiorari might delay, if not wholly diſcourage their proſecution. 2 *Hawk. P. C.* 287.

Nor will the court of King's Bench grant it for a conviction of recuſancy on a default at the ſeſſions, becauſe by the ſtatute ſuch convictions are to be removed into the Exchequer, and proceſs on them is to go from thence. 2 *Hawk. P. C.* 287, 288.

A certiorari lies in all judicial proceedings, in which a writ of error does not lie; and it is a conſequence of all inferior juriſdictions erected by act of parliament, to have their proceedings returnable in the King's Bench. *Ld. Raym.* 469, 580. And therefore a certiorari lies to juſtices of the peace, even in ſuch caſes which they are impowered by ſtatute *finally* to hear and determine; and the ſuperintendency of the court of King's Bench is not taken away without *expreſs* words. 2 *Hawk.* 286.

It

It ſeems agreed, that a certiorari ſhall never be granted to remove an indictment after a conviction, unleſs for ſome ſpecial cauſe; as where the judge below is doubtful what judgment is proper to be given; for unleſs there be ſome ſuch reaſon, the judge who tried the cauſe, ſhall not be prevented from giving judgment in it; for it cannot be intended but that he is beſt acquainted with the circumſtances of it, and conſequently beſt able to judge what fine or other puniſhment is proper for it. 2 *Hawk.* 288.

2 Stran. 1227. Eaſt. 18 Geo. 2. King v. Nicholls.

An indictment was removed into the King's Bench by certiorari, after conviction, and before judgment. Upon which a doubt aroſe, what the court could do, the certiorari being brought before judgment; and this court not being apprized of the circumſtances of the offence, could not tell what judgment to give: And in *Carth.* 6. it is ſaid they cannot give judgment. A rule therefore was made, to ſhew cauſe why the certiorari ſhould not be quaſhed, ſo as to remit it back to the ſeſſions; which was afterwards made abſolute.

Certiorari to remove an indictment from the quarter-ſeſſions not being iſſued till after confeſſion of the aſſault below, a procedendo was granted.

Lord *Mansfield* being abſent in the dutchy-court, the three other judges (on a defended motion) granted a *procedendo*, at the inſtance of the defendant, to the quarter-ſeſſions of *Brecon*, upon an indictment for an aſſault removed up hither; becauſe the *certiorari* had not iſſued till after the defendant had *confeſſed* the aſſault below; though the conviction was not after a trial, and though ſeveral of the juſtices were ſworn to be near relations of Mr. *Gwynne*, one of the defendants; namely, his father, two brothers, and an uncle.

2 Bur. Rep. 749. Hil. 32 Geo 2. Rex v. Gwynne & al'.

Certiorari lies to remove orders made upon the conventicle act, 22 Car. 2. c. 1. even after appeal, trial by a jury, verdict and judgment againſt the defendants, notwithſtanding the 6th & 13th ſections: for the certiorari does not go to try the merits, but to ſee whether the limited juriſdiction have exceeded their bounds or not.

Mr. *Knowler* and Mr. *Filmer* ſhewed cauſe againſt *iſſuing* of a *certiorari* to remove ſeveral orders made by Mr. *Moneypenny*, a juſtice of peace in *Kent*, upon the *Conventicle-Act*, 22 *Car.* 2. *c.* 1. By which orders he had convicted a methodiſt preacher, and the maſter of the houſe wherein he preached, and ſeveral of the audience, in the reſpective penalties following. The preacher (*Moreley*) was convicted in 20 *l.* The maſter of the houſe (*Oſborne*) in 20 *l.* and ſeveral of the perſons preſent in 5 *s.* a-piece. Two of the auditors (*Reeve* and *Norris*) had 10 *l.* a-piece levied upon them, (by virtue of the third ſection of this act); the preacher himſelf not being to be found. The penalty had been levied upon *Oſborne*, (the maſter of the houſe) as well as upon *Reeve* and *Norris*. They had all appealed (within the week) to the ſeſſions: And Mr. *Moneypenny* had returned to the ſeſſions, the monies levied, and certified the evidence, with the record of the conviction, agreeable to the directions of the 6th ſection; and the defendants had pleaded and been *tried by a jury* at the quarter-ſeſſions; and there had been both verdict and judgment given againſt them.

2 Bur. Rep. 1040. Trin. 33 & 34 Geo. 2. Rex v. Morely, Oſborne, Reeve and Norris.

Mr. *Knowler* and Mr *Filmer*, on behalf of the proſecution, urged, that after all this had paſſed, a *writ of error* might lie; but not a *certiorari*, which

which will lie when there is *no other remedy*. And there is a clauſe in the 6th ſection, which expreſſes, " That no *other court* whatſoever *ſhall inter-* " *meddle* with any cauſe or cauſes of appeal upon this act; but they ſhall " be finally determined in the quarter-ſeſſions only." Which negative words muſt include all the courts of judicature in the kingdom, and this court in particular, as being moſt likely to meddle with matters of this kind. And the 13th ſection directs " that this act, and *all clauſes* therein " contained, ſhall be *conſtrued moſt largely and beneficially* for the *ſuppreſſing* " of conventicles, and for the *juſtification* and *encouragement* of all perſons " to be employed in the execution thereof; and that no record, warrant " or mittimus to be made by virtue of this act, *or any proceedings there-* " *upon*, ſhall be reverſed, avoided *or any way impeached*, by reaſon of any " *default in forms*." Therefore, to *what purpoſe* ſhould a *certiorari* iſſue, when the court can neither intermeddle with the *fact or form?* The penalties are (by the ſecond ſection) to be *diſtributed* into three parts; $\frac{1}{3}$ to the king, $\frac{1}{3}$ to the poor, $\frac{1}{3}$ to the informer; and thoſe penalties *have been* ſo diſtributed; and this court can *not order reſtitution*. As to the penalties *under* 10*s*. the act gives *no appeal:* If the juſtices have done any wrong in the manner of *theſe*, 'tis a matter *coram non judice*. Mr. *Knowler* and Mr. *Filmer* had affidavits of the facts which they alledged. Lord *Manſfield*, aſked them whether the negative words in the 6th ſection would not conclude ſtrongly againſt a *writ of error*. Mr. *Knowler* and Mr. *Filmer* anſwered, That as to *fact*, they might; but, perhaps, *not* as to *law*. They cited a little printed book, ſaid to be written by lord chief juſtice *Saunders*, (a comment on this conventicle-act) *folio* 69. *ſect*. 6. and *ſect*. 13. which ſhewed *him* to be of opinion " That *no certiorari* would lie upon it." Mr Juſtice *Denniſon* obſerved, that there have been many determinations to the contrary ſince.

Mr. *Norton*, Mr. *Stow*, and Mr. *Leigh*, who were for the *certiorari*, inſiſted that the *general* juriſdiction of *this* court is *not* taken away by *mere negative words* in an act of parliament: this court ſhall never be *ouſted of its juriſdiction* without ſpecial *words*. Dr. *Foſter*'s caſe, 11 *Co*. 64. *b*. 1 *Ro*. *Rep*. 92, 94. *S*. *C*. 1 *Ventr*. 66. *Smith*'s caſe. 1 *Mod*. 45. *S*. *C*. Beſides, theſe words, " that no other court whatſoever ſhall intermeddle *with any* " *cauſe or cauſes of appeal*; but that *they* ſhall be finally determined in the quarter-ſeſſions only" mean no more than that the *facts* ſhall *not be re-examined*; but the *legality* may; or a *want of juriſdiction* may be taken advantage of. The caſe *may* be ſuch as that the juſtices have *no juriſdiction* of the matter. And where a ſtatute does not *expreſsly* and *totidem verbis take away a certiorari*, and direct, " that, *no certiorari* ſhall iſſue," the court will grant one. And *Peat's* caſe, in 6 *Mod*. 228. proves, " that a *certi-* " *orari does lie* upon *this* very act." The court there ſay, " that the " juſtices of peace being judges of the matter, *if they wrong* you, *you* " have *your* remedy *by* certiorari, or appeal to the ſeſſions." And it appears in that caſe (at the end of it) that a *certiorari* had then *actually iſſued*. As to five of theſe convictions, which were againſt perſons *preſent* at this aſſembly, and under 10 *s*. (namely, only 5*s*. a-piece,) *no ap-*

peal is given: And consequently there can be no doubt but that a *certiorari does lie*, as to *them*.

Mr. *Norton*, being asked "*What* was the objection that he had to these "convictions," answered, that it was *not alledged* "That the defendants "*were subjects of this* realm: which is an essential requisite.

The court were unanimously of opinion, that a *certiorari* ought *to issue*. A *certiorari* does not go to try the *merit* of the question; but to see whether the *limited* jurisdiction have *exceeded their bounds*. The *jurisdiction* of *this* court is *not taken away*, unless there be *express* words to take it away: This is a point settled. Therefore a *certiorari* ought to issue: And after a return shall be made to it, you will be at liberty, and it will be open to you to move to supersede it, if there should appear reason for the court's so doing. *Rule* made absolute for a certiorari.

Stat. 21 *Jac.* 1. *c.* 8. [*A. D.* 1623.] *Made, among other purposes*, "To prevent the abuses in procuring writs of certiorari for the removing of indictments found before justices of the peace in their general sessions."

"*Sect.* 6. "And whereas divers bills of indictments of riot, forcible entry, or of assault and battery, being found before the justices of peace at their quarter-sessions of the peace, or otherwise, are oftentimes removed from the counties where such indictments are found, by writs of *certiorari* unto them directed out of the said courts, by, or by the means of the persons so indicted, who well know that few or no persons grieved by such their outrages and misdemeanors whereof they stand so indicted, will undergo the travel or charge of prosecution of such indictment so removed, by bringing the parties so indicted to trial; by means whereof, such offenders for the most part escape unprosecuted or unpunished, and the king loseth the fines which ought, and should have been imposed upon them, if such indictments had been prosecuted, and not removed:

Certioraries shall not be allowed, unless the indictee will become bound to pay costs. Farther provisions relating to *Certioraries*, 13 & 14 Ca. 2. c. 6. s. 16. 22 Car 2. c. 12. s. 4. 5 & 6 W. & M. c. 11. 8 & 9 W. 3. c. 33. 13 Geo. 2. c. 18.

Sect. 7. "Be it therefore enacted, That all such writs of *certiorari* shall, from and after the end of this present session of parliament, be delivered at some quarter-sessions of the peace in open court: (2) And that the parties indicted shall, before the allowance of such *certioraries*, become bound unto such person or persons which shall prosecute such bills of indictment against them, in the sum of ten pounds, with such sufficient sureties as the justices of peace at their quarter-sessions of the peace shall think fit, with condition to pay unto the said prosecutors of such bills of indictment, within one month after the conviction of such parties indicted, such reasonable costs and damages, as the said justices of peace of such counties where such bills of indictment shall be found, in the said sessions of the peace shall assess or allow: (3) And that in default thereof, it shall be lawful for the said justices to proceed to trial of such indictments; any such writs of *certiorari* to remove the same indictments notwithstanding."

Stat. 5 *Will. & Ma. c.* 11. [*A. D.* 1694. *intituled*] "An act to prevent delays of proceedings at the quarter-seſſions of the peace."

"Whereas it is experienced that, notwithſtanding the ſtatutes made in the one and twentieth year of the reign of king *James* the firſt, and in the thirteenth and fourteenth and two and twentieth years of king *Charles* the ſecond, concerning the granting of writs of *certiorari*, to remove indictments of riots, forcible entry, aſſault and battery, and other preſentments and indictments out of the courts of the general or quarter-ſeſſions of the peace, in the counties or places wherein ſuch indictments have been found, and proceedings thereupon recorded, into their majeſties court of *King's Bench*, divers turbulent, contentious, lewd and evil diſpoſed perſons, fearing to be deſervedly puniſhed, where they and their offences are well known, have not only obtained writs of *certiorari* for removing ſuch indictments found againſt them as aforeſaid, but alſo indictments for ſundry other treſpaſſes, frauds, nuſances, contempts and miſdemeanors, after iſſue joined, and the proſecutors attending with their council and witneſſes to try the ſame before the ſaid juſtices of the peace in their ſaid ſeſſions, to the great diſcourgement of the proſecutors, and of ſuch conſtables and other officers, as according to their duty preſent perſons for thoſe and ſuch like treſpaſſes, offences, and miſdemeanors: For remedy whereof, and that ſuch offenders may be brought to condign puniſhment;" 21 Jac. 1. c. 8. 13 & 14 Car. 2. c. 6. ſ. 16. 22 Car. 2. c. 12. ſ. 4.

Sect. 2. "Be it enacted by the king's and queen's moſt excellent majeſties, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, that in term time no writ of *certiorari* whatſoever, at the proſecution of any party indicted, be hereafter granted, awarded, or directed out of the ſaid court of *King's Bench*, to remove any ſuch indictment or preſentment of treſpaſs or miſdemeanor, before trial had, from before the ſaid juſtices in the ſaid courts of general or quarter-ſeſſions of the peace, unleſs ſuch *certiorari* ſhall be granted or awarded upon motion of council, and by rule of court made for the granting thereof, before the judge or judges of the ſaid court of *King's Bench* ſitting in open court, and that all the parties indicted, proſecuting ſuch *certiorari*, before the allowance thereof, ſhall find two ſufficient manucaptors, who ſhall enter into a recognizance before one or more juſtices of the peace of the county or place, in the ſum of twenty pounds, with condition at the return of ſuch writ to appear and plead to the ſaid indictment or preſentment in the ſaid court of *King's Bench*, and at his and their own coſts and charges to cauſe and procure the iſſue that ſhall be joined upon the ſaid indictment or preſentment, or any plea relating thereunto, to be tried at the next aſſizes to be held for the county wherein the ſaid indictment or preſentment was found, after ſuch *certiorari* ſhall be returnable, if not in the cities of *London*, *Weſtminſter*, or county of *Middleſex*; and if in the ſaid cities or county, then to cauſe or procure it to be tried the next term after, wherein ſuch *certiorari* ſhall be granted, or at the ſitting after the ſaid term, if the court of *King's Bench* ſhall not appoint any other time for the trial thereof; and if

Certiorari in term time grantable only upon motion.

Recognizance to be given for trying the iſſue next aſſizes, 2 Salk. 564.

except in London and Weſtminſter.

any other time ſhall be appointed by the court, then at ſuch other time, and to give due notice of ſuch trial to the proſecutor, or his clerk in court; and that the ſaid recognizance and recognizances, taken as aforeſaid, ſhall be certified into the ſaid court of *King's Bench*, with the ſaid *certiorari* and indictment to be there filed, and the name of the proſecutor (if he be the party grieved or injured) or ſome publick officer, to be indorſed on the back of the ſaid indictment, and if the perſon proſecuting ſuch *certiorari*, being the defendant, ſhall not before allowance thereof, procure ſuch manucaptors to be bound in a recognizance as aforeſaid, the juſtices of the peace may and ſhall proceed to trial of the ſaid indictment at the ſaid ſeſſions, notwithſtanding ſuch writ of *certiorari* ſo delivered."

Certiorari granted without recognizance void.

Officers proſecuting ſhall have double coſts.

Sect. 3. "And be it further enacted, That if the defendant proſecuting ſuch writ of *certiorari* be convicted of the offence, for which he was indicted, that then the ſaid court of *King's Bench* ſhall give reaſonable coſts to the proſecutor, if he be the party grieved or injured, or be a juſtice of the peace, mayor, bailiff, conſtable, headborough, tythingman, churchwarden, or overſeer, of the poor, or any other civil officer, who ſhall proſecute upon the account of any fact committed or done, that concerned him or them, as officer or officers, to proſecute or preſent, which coſts ſhall be taxed according to the courſe of the ſaid court, and that the proſecutor, for the recovery of ſuch coſts, ſhall within ten days after demand made of the defendant, and refuſal of payment on oath, have an attachment granted againſt the defendant by the ſaid court for ſuch his contempt; and that the ſaid recognizance ſhall not be diſcharged till the coſts ſo taxed ſhall be paid."

Certiorari how grantable in vacation.

Sect. 4. "Provided always, and be it enacted by the authority aforeſaid, That in any of the vacations, writs of *certiorari* may be granted by any of the juſtices of their majeſties court of *King's Bench*, whoſe names ſhall be indorſed on the ſaid writ, and alſo the name of ſuch perſon at whoſe inſtance the ſame is granted, and that the party or parties indicted, proſecuting ſuch *certiorari*, ſhall before the allowance of ſuch writ or writs of *certiorari*, find ſuch ſureties in ſuch ſum, and with ſuch conditions, as are before mentioned and ſpecified in this preſent act."

Certiorari in Cheſter, &c. how granted.

Sect. 5. "And be it further enacted by the authority aforeſaid, That upon every *certiorari* granted or awarded within the counties palatine of *Cheſter*, *Lancaſter*, or *Durham*, to remove indictments or preſentments for any of the matters aforementioned, all the parties indicted, proſecuting ſuch *certiorari*, ſhall find ſuch ſureties to be bound in ſuch ſums, and with ſuch reſpective conditions, and at his or their own coſts and charges ſhall cauſe and procure the iſſue joined upon the ſaid indictments or preſentments, to be tried at the next aſſizes or general gaol-delivery to be held for the ſaid reſpective counties, and ſhall give like notice to the proſecutor; and if convicted ſhall be liable to like coſts, to be taxed as is by this act provided for in caſes where the ſame are granted, or awarded out of the court of *King's Bench* at *Weſtminſter*."

Certiorari upon repairing highways, &c. See Stat.

Sect. 6. "Provided always, and be it enacted by the authority aforeſaid, That if any indictment or preſentment be againſt any perſon or perſons, for not repairing of any highways, cauſeways, pavements, or bridges, and the

the right or title to repair the ſame may come in queſtion, upon ſuch ſuggeſtion and affidavit made of the truth thereof, a *certiorari* may be granted to remove the ſame into the court of *King's Bench*; any law or ſtatute to the contrary in any wiſe notwithſtanding. Provided nevertheleſs, That the party or parties proſecuting ſuch *certiorari* ſhall find two manucaptors to be bound in a recognizance and with condition as aforeſaid." 7 Geo. 3. c. 42. ſect. 53.

Sect. 7. "Provided always, and be it enacted by the authority aforeſaid, That this act ſhall continue and be in force for three years, and from thence to the end of the next ſeſſion of parliament and no longer. *Made perpetual by* 8 & 9 *W.* 3. *cap.* 33. This act to continue for 3 years.

Stat. 8 & 9 *Will.* 3. *c.* 33. [*A. D.* 1697. *intituled*] "An act to make perpetual and more effectual an act, intituled, *An act to prevent delays at the quarter-ſeſſions of the peace.*

"Whereas an act made in the fifth and ſixth years of the reign of king *William* and the late queen *Mary*, intituled, *An act to prevent delays of proceedings at the quarter-ſeſſions of the peace*, which was to continue and be in force for three years, and from thence to the end of the next ſeſſion of parliament, by experience hath been found uſeful and beneficial; therefore for continuing the ſame, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That the ſaid act ſhall be and is hereby continued, and ſhall be in force and be made perpetual." Act 5 & 6 W. & M. c. 11. made perpetual.

Sect. 2. "And for making the Purpoſe and deſign of the ſaid act more effectual, be it enacted by the authority aforeſaid, That from and after the one and twentieth day of *April*, which ſhall be in the year of our Lord one thouſand ſix hundred ninety-ſeven, the party or parties proſecuting any *certiorari*, to remove any indictment or preſentment from the quarter or general ſeſſions of the peace, may find two ſufficient *manucaptors*, who ſhall enter into a recognizance before any one of his majeſty's juſtices of the court of king's bench, in the ſame ſum, and under the ſame condition as is required by the ſaid act, whereof mention ſhall be made on the back of ſuch writ, under the hand of the juſtice taking the ſame, which ſhall be as effectual and available to all intents and purpoſes, to ſtay and ſuperſede any further proceedings upon any indictment or preſentment, for the removal of which the ſaid writ of *certiorari* ſhall be granted, as if the recognizance had been taken before any one of the juſtices of the peace of the county or place where ſuch indictment was found, or preſentment made; and alſo it ſhall be added to the condition of every recognizance taken by virtue of this and the ſaid act, that the party or parties proſecuting ſuch writ of *certiorari*, ſhall appear from day to day in the ſaid court of king's bench, and not depart until he or they ſhall be diſcharged by the ſaid court. Party proſecuting any *certiorari* to remove an indictment may find two manucaptors to enter into a recognizance, &c. Party to appear daily in the King's bench court until diſcharged.

In the conſtruction of theſe ſtatutes, ſays Mr. ſerjeant *Hawkins*, the following points ſeem moſt remarkable:

Firſt,

Firſt, That notwithſtanding by the expreſs words, juſtices of peace may proceed to trial of the indictments, notwithſtanding the *certiorari*, if a proper recognizance be not given; yet they will be in contempt to the court that awarded the *certiorari*, if they make no return to it; for all writs muſt be obeyed, unleſs good cauſe be ſhewn to the contrary; and the proper way of ſhewing it is to return it. 2 *Hawk.* 292.

Secondly, That it appears from the manifeſt purport of theſe ſtatutes, that they extend only to *certioraries* procured by perſons *indicted*; from whence it follows, that thoſe which are procured by the proſecutor of an indictment remain as they were at common law. 2 *Hawk. P. C.* 292.

Thirdly, That theſe ſtatutes, being in the affirmative as to the taking of recognizances, do not take away the power which the juſtices of the king's bench have by the common law of taking recognizances upon their granting *certioraries*, from whence it follows, that if any ſuch juſtice, granting a *certiorari*, ſhall take a recognizance variant from that preſcribed by the act, either as to the ſum or condition, *&c.* ſuch recognizance will have the ſame force as it would have had, if theſe ſtatutes had not been made; but it is ſaid, that the *certiorari*, if procured by the defendant, will not in ſuch caſe be a *ſuperſedeas* to the proceedings below, as it would have been at the common law; for the ſtatute ſeems to be expreſs, that the ſeſſions may proceed notwithſtanding any *certiorari* procured by a defendant whereon ſuch recognizance is not given, as is expreſly preſcribed. 2 *Hawk. P. C.* 292.

Fourthly, That if the perſons offering to be ſureties, appear to be worth 20 *l.* the juſtices cannot refuſe them. 2 *Hawk. P. C.* 292.

Fifthly, That if divers be indicted in the ſame indictment, and ſome of them find ſureties, and others not, the indictment ought to be removed as to thoſe who find ſureties, becauſe they ſhall not be prejudiced by the default of the others: And, as ſome ſay, it ſhall be removed as to the others alſo. 2 *Hawk. P. C.* 292.

Sixthly, That the maſter of the crown-office, in taxing the coſts, ought only to conſider thoſe which are ſubſequent to the *certiorari*. 2 *Hawk. P. C.* 292.

Seventhly, That the proſecutor, by accepting the coſts ſo taxed, is not reſtrained from aggravating the fine to be ſet on the defendant, becauſe he has a right to ſuch coſts by the expreſs words of the ſtatute; and therefore the defendant can claim no indulgence from having paid them: But in other caſes, after a proſecutor has accepted coſts from a defendant, he cannot by the rules of the court aggravate his fine, becauſe in ſuch caſes, having no right to demand coſts, if he take them at all, he muſt take them by way of ſatisfaction of the wrong, after which it is unreaſonable in him to harraſs the defendant. And this I take to be a common practice, though in *Salkeld*'s reports (1 *Salk.* 55. *pl.* 5.) there ſeems to be a note to the contrary. 2 *Hawk. P. C.* 292.

Eighthly, That notwithſtanding the condition of the recognizance ſeems to be expreſs, that the defendant ſhall procure a trial at the next aſſize, *&c.*

yet

yet it ſhall not be forfeited, unleſs the proſecutor of the indictment give rules according to the courſe of the court. 2 *Hawk. P. C.* 293.

Ninthly, That after ſuch recognizance is forfeited, by the defendant's not procuring a trial according to the purport of the condition, the court will not hear any motion to quaſh the indictment, or *certiorari*. 2 *Hawk. P. C.* 293.

Stat. 5 *Geo.* 2. *c.* 19. [*A. D.* 1732. *intituled*] "An act to oblige the juſtices of the peace at their general or quarter ſeſſions to determine appeals made to them according to the merits of the caſe, notwithſtanding defects of form in the original proceedings; and to oblige perſons ſuing forth writs of *certiorari* to remove orders made on ſuch appeals into his majeſty's court of King's Bench, to give ſecurity to proſecute the ſame with effect."

"Whereas in many caſes, where his majeſty's juſtices of the peace by law are impowered to give or make judgments or orders, great expences have been occaſioned by reaſon that ſuch judgments or orders have, on appeals to the juſtices of the peace at their reſpective general or quarter ſeſſions, been quaſhed or ſet aſide upon exceptions or objections to the form or forms of the proceedings, without hearing or examining the truth and merits of the matter in queſtion between the parties concerned: Therefore to prevent the ſame for the future, may it pleaſe your moſt excellent majeſty, that it may be enacted, and Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-two, upon all appeals to be made to the juſtices of the peace at their reſpective general or quarter ſeſſions to be holden for any county, riding, city, liberty or precinct, within that part of *Great Britain* called *England*, againſt judgments or orders given or made by any juſtices of the peace as aforeſaid, ſuch juſtices, ſo aſſembled at any general or quarter ſeſſions, ſhall, and they are hereby required from time to time, within their reſpective juriſdictions, upon all and every ſuch appeals ſo made to them, to cauſe any defect or defects of form, that ſhall be found in any ſuch original judgment or orders, to be rectified and amended without any coſt or charge to the parties concerned, and after ſuch amendment made ſhall proceed to hear, examine and conſider the truth and merits of all matters concerning ſuch original judgments or orders; and likewiſe to examine all witneſſes upon oath, and hear all other proofs relating thereto, and to make ſuch determinations thereupon, as by law they ſhould or ought to have done, in caſe there had not been ſuch defect or want of form in the original proceeding; any law, uſage or cuſtom to the contrary notwithſtanding."

After 24 June 1732, juſtices may rectify defects of form on appeals,

and may proceed to determine them.

Sect. 2. "And whereas divers writs of *certiorari* have been procured to remove ſuch judgments or orders into his majeſty's court of King's Bench at *Weſtminſter*, in hopes thereby to diſcourage and weary out the parties concerned

concerned in such judgments or orders by great delays and expences: Be it therefore enacted by the authority aforesaid, That no *certiorari* shall be allowed to remove any such judgment or order, unless the party or parties prosecuting such *certiorari*, before the allowance thereof, shall enter into a recognizance, with sufficient sureties, before one or more justices of the peace of the county or place, or before the justice at their general quarter-sessions, or general sessions, where such judgment or order shall have been given or made, or before any one of his majesty's justices of the said court of King's Bench, in the sum of fifty pounds, with condition to prosecute the same at his or their own costs and charges with effect, without any wilful or affected delay, and to pay the party or parties, in whose favour and for whose benefit such judgment or order was given or made, within one month after the said judgment or order shall be confirmed, their full costs and charges, to be taxed according to the course of the court, where such judgments or orders shall be confirmed; and in case the party or parties prosecuting such *certiorari*, shall not enter into such recognizance, or shall not perform the conditions aforesaid, it shall and may be lawful for the said justices to proceed, and make such further order or orders for the benefit of the party or parties, for whom such judgment shall be given, in such manner as if no *certiorari* had been granted."

No certiorari to be allowed to remove justices orders, without a recognizance of 50 l. to prosecute to effect.

On refusal of recognizance justices to proceed.

Sect. 3. "And it is hereby further enacted by the authority aforesaid, that the recognizance and recognizances, to be taken as aforesaid, shall be certified into the court of King's Bench at *Westminster*, and there filed with the *certiorari* and order, or judgment removed thereby; and if the said order or judgment shall be confirmed by the said court, the persons intitled to such costs, for the recovery thereof, within ten days after the demand made, of the person or persons who ought to pay the said costs, upon oath made of the making such demand and refusal of payment thereof, shall have an attachment granted against him or them by the said court for such contempt; and the said recognizance so given, upon the allowing of such *certiorari*, shall not be discharged until the costs shall be paid, and the order so confirmed shall be complied with and obeyed."

Recognizances to be certified into the King's Bench.

Attachment for contempt.

Stat. 13 *Geo.* 2. *c.* 18. [*A. D.* 1740.] *made, among other purposes,* "for limiting the time for suing forth writs of *certiorari* upon proceedings before justices of the peace."

Sect. 5. "And for the better preventing vexatious delays and expence, occasioned by the suing forth writs of *certiorari*, for the removal of convictions, judgments, orders and other proceedings before justices of the peace; Be it further enacted by the authority aforesaid, That from and after the twenty-fourth day of *June*, which shall be in the year of our Lord one thousand seven hundred and forty, no writ of *certiorari* shall be granted, issued forth, or allowed, to remove any conviction, judgment, order or other proceedings had or made by or before any justice or justices of the peace of any county, city, borough, town corporate or liberty, or the respective general or quarter sessions thereof, unless such *certiorari* be moved

Writ of certiorari how to be applied for.

or applied for within ſix kalendar months next after ſuch conviction, judgment, order or other proceedings ſhall be ſo had or made, and unleſs it be duly proved upon oath, that the ſaid party or parties ſuing forth the ſame, hath or have given ſix days notice thereof in writing to the juſtice or juſtices, or to two of them, (if ſo many there be) by and before whom ſuch conviction, judgment, order or other proceeding ſhall be ſo had or made, to the end that ſuch juſtice or juſtices, or the parties therein concerned, may ſhew cauſe, if he or they ſhall ſo think fit, againſt the iſſuing or granting ſuch *certiorari*."

Certiorari on 5 & 6 Will. & M. c. 11. ſ. 3. (See page 579) no coſts are payable, unleſs the indictment be brought by the party *grieved*, or by juſtices, mayors, &c. or other civil officers proſecuting *as* being ſuch.

Mr. *Clayton* had moved (on the 19th inſtant) that the defendant might be at liberty (without paying any coſts) *to pay into court* 40 *s.* being the *penalty* for his *exerciſing the trade* of a grocer, for the ſpace of one month, contrary to 5 *Eliz. c.* 4. whereof he had been convicted upon an indictment found at the laſt *Cumberland* aſſizes; (which proceedings the defendant had removed hither by *certiorari*;) and that therefore the *recognizance* might be *diſcharged:* And he founded his motion upon the authority of *Rex* v. *French*, *Paſch.* 24 *G.* 2. *B. R.* *Rex* v. *Fiſher*, *Tr.* 24 *G.* 2. *B. R.* (both on the motion of Mr. *Ford*;) in which caſes this was done; becauſe by 5 and 6 *W. & M. c.* 11. *ſ.* 3. no coſts are payable; *but* upon indictments brought by the *party aggrieved*, or upon proſecutions by juſtices, *&c.* or other civil officers proſecuting *as ſuch.* And ſo it was alſo, in a former caſe of *Rex* v. *Mary Incledon*, *M.* 20 *G.* 2. *B. R.* A rule was made to ſhew cauſe. And now, Mr. *Norton* not objecting to this motion, (being ſatisfied with the caſes cited) the ſaid rule was made abſolute."

1 Bur. Rep. 431. Mich. 31 Geo. 2. Rex v. Strong.

Orders of juſtices not to be removed before the time of appeal expired.

A rule was made that no *certiorari* ſhould be granted to remove orders of juſtices, from which the law has given an appeal to the ſeſſions, before the matter be determined on the appeal, becauſe it hinders the privilege of applying; and that if any order be removed before appeal, it ſhould be ſent down again: But if the time of appeal be expired, that caſe is not within the rule, *per Holt* Ch. J. But afterwards in *Mich.* 4 *Ann. B. R.* in the caſe of the inhabitants of *Shellington*, it was held, that advantage muſt be taken of this rule upon the motion to file the order, for that after it is filed, it is too late.

1 Salk. 147. Paſ. 1 Ann. B. R.

Certiorari to remove an order before appeal, where the time for appealing is not limited; 2 Stra 991. Mich. 8 Geo. 2. Caſe of the borough of Warwick.

Appeal from a poor's rate, and the ſeſſions ordered the churchwardens to produce the books at an adjourned day, before which a *certiorari* was brought to remove that order, and held to lie though the appeal is depending, elſe the order muſt be obeyed before the validity of it can be determined. It was alſo held, that an appointment of overſeers may be removed before an appeal to the ſeſſions; for the rule laid down in *Salk.* 147. extends only to the caſe where there is a limited time for appealing, as to the next quarter-ſeſſions; but the ſtatute 43 *Eliz. cap.* 2. is not ſo reſtrained; and conſequently it can never be ſaid, that the time for appealing is out. And if the appeal from an appointment is lodged, there can be no *certiorari*, till the ſeſſions had made a determination, and a *certiorari* brought pending ſuch appeal ſhall be ſuppreſſed.

How far a certiorari is a ſuperſedeas to the court below.

It is clearly ſettled, that after a *certiorari* is allowed by the court below, all ſubſequent proceedings on the record are erroneous. Alſo before 21 *Jac.* 1. which requires that all *certiorari's* for indictments, forcible entries, at ſeſſions, ſhall be delivered in court, the delivery of ſuch *certiorari* to any one juſtice of the peace of the ſame place, made all ſubſequent proceedings erroneous; and if any proceſs had been before awarded on the indictment, the juſtice to whom the *certiorari* was delivered, ought immediately to have awarded a *ſuperſedeas* to the ſheriff, in order to have ſtopped the execution of it; and it ſeems that the delivery of ſuch a *ſuperſedeas* to the ſheriff before he has begun to put a proceſs in execution, makes his ſubſequent execution of it wholly void, becauſe it is but a miniſterial act; but if it be not delivered till after the execution is begun, he may afterwards go through with it, by virtue of a writ of *venditioni exponas.* 2 *Hawk. P. C.* 293, 294.

It is ſaid that the bare delivery of a *certiorari* makes all ſubſequent proceedings on the record, whether before or after the return of the *certiorari*, erroneous, by force of the words *coram nobis terminari volumus & non alibi*; in which reſpect a *certiorari* is of greater force than a writ of error; for that becomes of no effect if the record be not certified in a reaſonable time; alſo it hath been held that the very iſſuing of a *certiorari* is of itſelf a *ſuperſedeas*, though it be never delivered; in the ſame manner as an appearance in the court above; and a *ſuperſedeas* purchaſed there, though not delivered to the ſheriff till after the *quinto exactus*, will avoid an outlawry pronounced after; but it ſeems the better opinion, that if a *certiorari* be delivered before iſſue is joined, or at leaſt before the return of it is expired, it is of no effect; however it is of no force at this day, as to indictments at ſeſſions without a proper recognizance, purſuant to the ſaid acts of parliament. 2 *Hawk. P. C.* 293, 294.

A *certiorari* for the removal of a recognizance for the good behaviour, or for an appearance at the ſeſſions, will not ſuperſede its obligation, becauſe it would be highly inconvenient that the party, againſt whom there may be very juſt matter of complaint, ſhould be let looſe upon the bare bringing a writ. 2 *Hawk. P. C.* 294.

The return of a *certiorari* ought to be under the ſeal of the inferior court, or of the juſtice or juſtices to whom it is directed, and if ſuch court have no proper ſeal, it may be under any other ſeal. Alſo it muſt be made by the perſon to whom the *certiorari* is directed, to the juſtices of peace of ſuch a place, and the clerk of the peace only return it, or to the conſtable, or to the recorder of *B.* and the deputy conſtable or deputy recorder, return it, (without ſhewing in the return, that the principal had power to make a deputy) or to the ſteward of St. *Paul's*, and the ſteward of the church of St. *Peter* and St. *Paul* return it, nothing is removed. 2 *Hawk. P. C.* 294.

But if it be directed to the juſtice of *Cheſter*, it may be returned by *A. B.* chief juſtice, for the ſame officer is known to be meant in the writ and return, and his deſcription in both is in ſubſtance the ſame. 2 *Hawk. P. C.* 294.

A recognizance taken by a juſtice of peace, ought to be certified by ſuch juſtice only, till it be made a record of the ſeſſions, after which it ſhall be certified in the ſame manner as the other records of the ſeſſions. 2 *Hawk. P. C.* 295.

The return to a *certiorari*, directed to juſtices of the peace, for the removal of an indictment, ought to have the clauſe, *as alſo to hear and determine divers felonies*, &c. in the deſcription of the juſtices who make the return, where ſuch clauſe is neceſſary in the caption of an indictment. 2 *Hawk. P. C.* 295.

The perſon to whom a *certiorari* is directed, may make what return to it he pleaſes, and the court will not ſtop the filing of it, on affidavit of its falſity, except only where the publick good requires it; as in the caſe of the commiſſioners of ſewers, or for ſome other eſpecial reaſon. 2 *Hawk. P. C.* 295.

Whatſoever is put into the return of a *certiorari*, by way of explanation or otherwiſe, beſides what is ordered to be returned, is put in without warrant, and not to be regarded. 2 *Hawk.* 295.

Generally the record itſelf or the tenor of it, or the tenor of the tenor, is to be certified in the return to a *certiorari* according as the writ requires; for if, on a *certiorari* to return an order of juſtices of the peace, the tenor of it be only certified, the return is nought, but the return of the tenor of an indictment from *London* is good, by the city charter; alſo it is ſaid to be ſufficient to certify the tenor only in all caſes where the purport of the *certiorari* is not to proceed on the record removed, but only to try the iſſue of *nul tiel record*. However it ſeems clear, that if the court, which awards a *certiorari*, have no juriſdiction to proceed on the record ordered to be removed, as where the court of *Common Pleas* awarded a *certiorari* for an indictment, the tenor only ſhall be removed, leſt there ſhould be a failure of juſtice. 2 *Hawk. P. C.* 295.

Cheat.

THOSE cheats which are puniſhable by the common law, may in general be deſcribed to be deceitful practices, in defrauding or endeavouring to defraud another of his own right by means of ſome artful device, contrary to the plain rules of common honeſty; as by playing with falſe dice; or by cauſing an illiterate perſon to execute a deed to his prejudice by reading it over to him in words different from thoſe in which it was written, or by perſwading a woman to execute writings to another, as her truſtee upon an intended marriage, which in truth contained on ſuch thing, but only a warrant of attorney to confeſs a judgment, *&c.* or by ſuppreſſing a will, or by levying a fine in another's name, or ſuing out an execution upon a judgment for him, or acknowledging an action in his

name without his privity, and againſt his will, in which caſes, by ſome good opinions, the record may be vacated, 1 *Hawk. P. C.* 187.

It ſeemeth to be the better opinion, That the deceitful receiving of money from one man to another's uſe, upon a falſe pretence of having a meſſage and order to that purpoſe, is not puniſhable by a criminal proſecution, becauſe it is accompanied with no manner of artful contrivance, but wholly depends on a bare naked lie; and it is ſaid to be needleſs to provide ſevere laws for ſuch miſchiefs, againſt which common prudence and caution may be a ſufficient ſecurity. 1 *Hawk. P. C.* 188.

Some of the above mentioned offences are puniſhable, not only with fine and impriſonment, but alſo with farther infamous puniſhment, (as cheating with falſe dice, eſpecially if the offender be a common gameſter); others are puniſhable with fine and impriſonment only, by the diſcretion of the judges, which is regulated by the circumſtances of each particular caſe. 1 *Hawk. P. C.* 188.

Changing corn and giving bad inſtead of it, held indictable. 1 Seſſ. Ca. 217. Trin. 16 Geo. 2. Rex v. Wood. Latch 202. Trin. 3 Car. 1. Serleſted's caſe.

Indictment againſt the defendant a miller, for changing corn delivered to him to be ground, and giving bad corn inſtead of it. It was moved to quaſh it, becauſe only a private cheat, and not of publick nature. It was anſwered, that being a cheat in the way of trade, it concerned the publick, and therefore was indictable. *The King* againſt *Marſh*, 2 *Keb.* 584. *Mich.* 21 *Car.* But the court unanimouſly agreed not to quaſh the indictment.

A perſon falſely pretending that he had power to diſcharge ſoldiers, took money of a ſoldier to diſcharge him, and being indicted for the ſame, the court held the indictment to be good.

Stat. 33 *Hen.* 8. *c.* 1. [*A. D.* 1741. *Intituled.*] "A bill againſt them that counterfeit letters or privy tokens, to receive money or goods in other mens names."

"Foraſmuch as many light and evil diſpoſed perſons, not minding to get their livings by truth, according to the laws of this realm, but compaſſing and deviſing daily how they may unlawfully obtain and get into their hands and poſſeſſion goods, cattle, and jewels of other perſons, for the maintenance of their unthrifty living, and alſo knowing that if they come to any of the ſame goods, cattels, and jewels by ſtealth, that then they, being thereof lawfully convict according to the laws of the realm, ſhall die therefore; have now of late falſly and deceitfully contrived, deviſed, and imagined privy tokens, and counterfeit letters in other mens names, unto divers perſons their ſpecial friends and acquaintances, for the obtaininng of money, goods, cattels, and jewels of the ſame perſons, their friends, and acquaintances, by colour whereof the ſaid light and evil-diſpoſed perſons have deceitfully and unlawfully obtained and gotten great ſubſtance of money, goods, cattels, and jewels into their hands and poſſeſſions contrary to right and conſcience:

1 Bulſtr. 149. *Sect.* 2. "For reformation whereof, Be it ordained and enacted by the authority of this preſent parliament, That if any perſon or perſons, of what

what eſtate or degree ſoever he or they be, at any time after the firſt day of *April* next coming, falſly and deceitfully obtain, or get into his or their hands or poſſeſſions, any money, goods, cattels, jewels, or other things of any other perſon or perſons, by colour and means of any ſuch falſe token or counterfeit letter made in any other man's name, as is aforeſaid, that then every ſuch perſon and perſons ſo offending, and being thereof lawfully convict by witneſſes taken before the lord chancellor of *England* for the time being, or by examination of witneſſes, or confeſſion taken in the ſtar-chamber at *Weſtminſter* before the king's moſt honourable council, or before the juſtices of aſſiſe in their circuits for the time being, or before the juſtices of peace within any part of the king's dominions in their general ſeſſions, or by action in any of the king's courts of record, (2) ſhall have and ſuffer ſuch correction and puniſhment, by impriſonment of his body, ſetting upon the pillory, or otherwiſe by any corporal pain (except pains of death) as ſhall be unto him or them limited, adjudged, or appointed by the perſon or perſons before whom he ſhall be ſo convict of the ſaid offences, or of any of them.

The juſtices authority touching the ſaid offenders.

Sect. 3. "And be it further enacted by the authority aforeſaid, That as well the juſtices of aſſiſe for the time being, as alſo two juſtices of peace in every county, whereof the one to be of the *quorum*, ſhall have full power and authority to call and convent, by proceſs or otherwiſe, to the ſaid aſſiſes or general ſeſſions, any perſon or perſons being ſuſpected of any of the offences aforeſaid, and to commit him or them to ward, or let him or them to bail till the next aſſiſes or general ſeſſions, there to be examined, and further to be ordered by their diſcretions, as is aboveſaid.

The authority of juſtices of peace in cities, &c.

Sect. 4. "Provided always, and be it further enacted by authority aforeſaid, That juſtices of the peace within every city, borough, town, and franchiſe within this realm or other the king's dominions, ſhall have like juriſdiction, power and authority, at their general ſeſſions and otherwiſe, to do and execute all and every thing and things in all points, as other juſtices of the aſſiſes in their circuits, or juſtices of the peace in the counties, by virtue of this act, be limited and appointed to do and execute for the puniſhment and correction of like offenders, as by this aforeſaid act is ſpecified and declared: (2) Saving to the party grieved by ſuch deceit, ſuch remedy by way of action or otherwiſe, of and for the ſame money, goods, cattels, jewels, or other things ſo obtained, as he might have had if this act had never been had ne made; any thing in the ſame contained to the contrary in any wiſe notwithſtanding.

The remedy of the party grieved.

The king's council of Calice.

Sect. 5. "Provided always, and be it further enacted by the authority aforeſaid, That the king's highneſs council of his town of *Calice*, or three of them for the time being, ſhall have ſuch and like authority for the examination, bailment, and puniſhment of ſuch offender or offenders, and for ſuch offences hereafter to be committed and done within the town and marches of *Calice*, and counties of *Guiſnes*, as the aforeſaid juſtices of aſſiſe or juſtices of peace have by force of this act within their juriſdictions and authorities."

Sir

3 Inſt. 123. Sir *Edward Coke* is of opinion, ſays Mr. ſerjeant *Hawkins*, that the offender cannot be fined in a proſecution upon this ſtatute, becauſe ſome *corporal* puniſhment ſhall be inflicted, and no other is mentioned; however, there is a precedent in *Croke's* reports, by which it appears, that one convicted on ſuch a proſecution hath been adjudged not only to ſtand on the pillory, but alſo to pay a fine of five hundred pounds, and to be bound with good ſureties to his behaviour.

Cro Car. 564.

Indictment for attempting to defraud a tradeſman of his goods, not ſaid with falſe tokens, and judgment arreſted. 2 Seſſ. Ca. 27. Eaſt. 3 G. 2. Rex v. Martha Brian.

The defendant was indicted for attempting to defraud one *Langley*, a mercer in *Ludgate-ſtreet*, of ſome pieces of velvet and ſilks, pretending ſhe was ſervant to a lady his cuſtomer who wanted the goods, and that ſhe was to carry them back with her. This appeared on the evidence at *Guildhall* before my lord chief juſtice *Raymond*, and the proſecutor ſuſpecting her refuſed to let her have the goods ſhe aſked for, and which were mentioned in a letter ſhe ſaid was ſent by the lady; he carried her before a juſtice of the peace; ſhe was found guilty on that indictment; and now moved in arreſt of judgment, that by the record it does not appear ſhe made uſe of *any falſe tokens*, and then it is not an indictable offence; *The King* againſt *Jones*, *Salk.* 379. 6 *Mod.* 105. And as it appeared that ſhe did not get any of the proſecutor's goods into her poſſeſſion, ſhe cannot be charged by force of the ſtatute 33 *H.* 8. *c.* 7. and that has been reſolved, *Vent.* 304. 5 *Mod.* 18. and therefore, as no damage has accrued by this attempt of the defendant, ſhe ought to be freed of the judgment, 6 *Mod.* 311. and there is no authority to ſupport this indictment. On the other ſide it was ſaid, that the proſecutor is a tradeſman, ſo the attempt is public in its own nature. This is an indictment at common law, and the fact is a miſdemeanor. No action would lie in this caſe, which is the reaſon given in the books quoted, why an indictment ſhould be maintained. But judgment was arreſted.

The falſe tokens muſt be ſpecified in an indictment. 2 Sran. 1127. Hil. 3 Geo. 2. Rex v. Munoz.

He was convicted for procuring from one *Mary Kingsford* by falſe tokens a promiſſory note, under pretence that he would bring her money for it. And upon motion in arreſt of judgment it was held, that it is neceſſary in an indictment to ſpecify the falſe tokens. 2 *Cro.* 20. 4 *Co.* 40. *H. P. C.* 265. 1 *Lev.* 299. So the judgment was returned.

Stat. 30 *Geo.* 2. *c.* 24. [*A. D.* 1757. *Intituled*] "An act for the more effectual puniſhment of perſons who ſhall attain, or attempt to attain, poſſeſſion of goods or money, by falſe or untrue pretences; for preventing the unlawful pawning of goods; for the eaſy redemption of goods pawned; and for preventing gaming in public houſes by journeymen, labourers, ſervants and apprentices."

"Whereas divers evil-diſpoſed perſons, to ſupport their profligate way of life, have by various ſubtle ſtratagems, threats and devices, fraudulently obtained divers ſums of money, goods, wares and merchandizes, to the great injury of induſtrious families, and to the manifeſt prejudice of trade ad credit; Therefore for the puniſhing all ſuch offenders, Be it enacted by the king's moſt excellent majeſty, by and with the advice and

and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the twenty-ninth day of *September* one thouſand ſeven hundred and fifty-ſeven, all perſons who knowingly and deſignedly, by falſe pretence or pretences, ſhall obtain from any perſon or perſons, money, goods, wares or merchandizes, with intent to cheat or defraud any perſon or perſons of the ſame; or ſhall knowingly ſend or deliver any letter or writing, with or without a name or names ſubſcribed thereto, or ſigned with a fictitious name or names, letter or letters, threatning to accuſe any perſon of any crime puniſhable by law with death, tranſportation, pillory, or any other infamous puniſhment, with a view or intent to extort or gain money, goods, wares or merchandizes from the perſon or perſons ſo threatened to be accuſed, ſhall be deemed offenders againſt law and the publick peace; and the court before whom ſuch offender or offenders ſhall be tried, ſhall in caſe he, ſhe or they ſhall be convicted of any of the ſaid offences, order ſuch offender or offenders to be fined and impriſoned, or to be put in the pillory, or publickly whipped, or to be tranſported, as ſoon as conveniently may be (according to the laws made for tranſportation of felons) to ſome of his majeſty's colonies or plantations in *America*, for the term of ſeven years, as the court in which any ſuch offender or offenders ſhall be convicted ſhall think fit and order.

Perſons convicted of obtaining money or goods by falſe pretences, or of ſending threatening letters in order to extort money or goods, may be puniſhed by fine and impriſonment, or by pillory, whipping or tranſportation.

Sect. 2. "And be it further enacted by the authority aforeſaid, that any juſtice or juſtices of the peace of the county, riding, diviſion, city, liberty or place, before whom any perſon or perſons charged on oath, by any credible perſon or perſons, with having committed any of the offences intended by this act to be puniſhed, ſhall be brought, ſhall examine by oath (which oath every ſuch juſtice or juſtices is and are hereby impowered and required to adminiſter) and ſuch other lawful means as to any ſuch juſtices ſhall ſeem meet, touching the matters complained of, and deal with the offender or offenders according to law; and if the party or parties charged as being the offender or offenders, ſhall be committed to priſon, or be admitted to bail, to anſwer the matters complained of at the next general or quarter ſeſſions of the peace, or next ſeſſions of *Oyer* and *Terminer*, which ſhall be held for the county, riding, diviſion, city, liberty or place wherein the offence ſhall be charged on oath, to have been committed, then ſuch juſtice or juſtices ſhall bind over the proſecutor and proſecutors of every ſuch offender and offenders to appear at the next general or quarter-ſeſſions of the peace, or next ſeſſions of *Oyer* and *Terminer* which ſhall be held for the county, riding, diviſion, city, liberty or place wherein the offence ſhall be charged to have been committed, by recognizance, in ſuch reaſonable ſum of money as to ſuch juſtice or juſtices ſhall ſeem requiſite, to proſecute ſuch offender and offenders with effect; and if any money, goods, wares or merchandizes fraudulently obtained, ſhall appear to ſuch juſtice or juſtices to exceed the amount or value of twenty pounds, then the recognizance to be taken in that behalf from the proſecutor or proſecutors, ſhall be in not leſs than double the amount or value the ſame ſhall appear before any ſuch juſtice or juſtices to be worth.

Where a charge is made of any of the ſaid offences, juſtice to enquire therein upon oath, and to bind over the complainant, to appear and proſecute; and his recognizance to be in proportion to the fraud.

Sect. 3. " And whereas divers of his majeſty's ſubjects ſuffer great inconveniencies and frequent loſſes, by perſons pawning or unlawfully diſpoſing of the goods and chattels of others, and the perſons ſo pawning or unlawfully diſpoſing of the goods or chattels of others, from the meanneſs of their circumſtances, are ſeldom able to make reſtitution or recompence to the parties injured, and the laws now in being are inſufficient to puniſh ſuch offenders; Be it therefore further enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September* one thouſand ſeven hundred and fifty-ſeven, if any perſon or perſons ſhall knowingly and deſignedly pawn or exchange, or unlawfully diſpoſe of the goods or chattels of any other perſon or perſons, not being employed or authorized by the owner or owners thereof ſo to do, and ſhall be thereof convicted by the oath of any credible witneſs or witneſſes, or by the confeſſion of the perſon or perſons charged with ſuch offence, before any ſuch juſtice or juſtices of the peace as aforeſaid (which oath every ſuch juſtice as aforeſaid is hereby impowered and required to adminiſter); every ſuch offender ſhall, for every ſuch offence, forfeit the ſum of twenty ſhillings; and in caſe the ſaid forfeiture ſhall not be forthwith paid, the juſtice juſtices of the peace as aforeſaid, before whom ſuch conviction ſhall be had, ſhall commit the party or parties ſo convicted to the houſe of correction, or ſome other publick priſon of the county, riding, diviſion, city or place wherein the offender or offenders ſhall reſide or be convicted, there to remain and be kept to hard labour for the ſpace of fourteen days, unleſs the ſaid forfeiture ſhall be ſooner paid; and if within three days before the expiration of the ſaid fourteen days, the ſaid forfeiture ſhall not be paid, the ſaid juſtice or juſtices is and are hereby required to order, upon the application of the proſecutor or proſecutors, the perſon or perſons ſo convicted to be publickly whipped in the houſe of correction or priſon to which the offender or offenders ſhall be committed, or in ſome open publick place of the city, riding, diviſion, town or place wherein the offence ſhall have been committed, as to ſuch juſtice or juſtices ſhall ſeem proper; and the ſaid reſpective forfeitures when recovered, ſhall be applied towards making ſatisfaction thereout to the party or parties injured, and defraying the coſts of the proſecution, as ſhall be adjudged reaſonable by the juſtice or juſtices before whom ſuch conviction ſhall be had; but if the party or parties injured ſhall decline to accept of ſuch ſatisfaction and coſts; or if there ſhall be any overplus of the ſaid reſpective forfeitures, after making ſuch ſatisfaction, and paying ſuch coſts as aforeſaid, then ſuch reſpective forfeitures, or the over-plus thereof (as the caſe ſhall happen) ſhall be paid and applied to and for the uſe of the poor of the pariſh or place where the offence ſhall have been committed, and ſhall be paid to the overſeers of the poor of ſuch pariſh for that purpoſe.

Penalty of 20 s. on pawning, exchanging, or diſpoſing of goods without leave of the owner;

and on non-payment, to be committed for 14 days to hard labour,

and if not paid within that time, to be whipped, on application of the proſecutor.

Application of the forfeitures.

Sect. 4. " And be it further enacted by the authority aforeſaid, That all and every perſon and perſons who, from and after the twenty-ninth day of *September* one thouſand ſeven hundred and fifty ſeven, ſhall take by way of pawn, pledge or exchange, of or from any perſon or perſons whomſoever,

Pawnbrokers to make entry of goods pawned, pledged or exchanged,

ſoever, any goods or chattels, of what kind ſoever the ſame ſhall be, ſhall forthwith enter or cauſe to be entered, in a fair or regular manner, in a book or books to be kept for that purpoſe, a deſcription of the goods or chattels which he, ſhe or they ſhall receive in pawn, pledge or exchange; and alſo the ſum of money advanced or paid thereon, with the day of the month and year on which, and the name and place of abode of the perſon or perſons by whom ſuch goods and chattels were ſo pawned, pledged or exchanged, and alſo the name and place of abode of the owner or owners thereof, according to the information of the perſon pawning or pledging, or exchanging the ſame; and ſhall at the ſame time give a duplicate or copy thereof to the perſon or perſons ſo pawning, pledging or exchanging the ſaid goods or chattels, if required; for which the perſon or perſons giving ſuch duplicate or copy, ſhall be paid by the perſon or perſons who ſhall ſo pawn, pledge or exchange ſuch goods or chattels the ſum of one half-penny, on goods and chattels pawned for leſs than twenty ſhillings, and one penny on goods or chattels pawned for twenty ſhillings, and not exceeding five pounds; and for every ſuch duplicate upon goods or chattels pawned for any larger ſum, the ſum of two pence, and no more; and in default of making ſuch entry, and giving ſuch duplicate or copy, if required as aforeſaid, he, ſhe or they ſhall reſpectively for every offence forfeit the ſum of five pounds, to be levied by diſtreſs and ſale of the goods and chattels of the offender or offenders, by warrant under the hand and ſeal, or hands and ſeals of any juſtice or juſtices of the peace of the county, riding, diviſion, city, liberty or place where the offence ſhall be committed; which reſpective forfeitures when levied, ſhall be paid and applied to the uſe of the poor of the pariſh or place wherein the offence ſhall be committed.

and a duplicate, if required, to be given thereof to the pawner, upon paying for the ſame.

Penalty 5l. on default of making ſuch entry, and giving ſuch duplicate.

Sect. 5. "And whereas it ſometimes happens that the goods or chattels pledged and pawned as aforeſaid, are ſpoiled and damaged, or rendered of leſs value than when the ſame were pledged or pawned, through the neglect, default, or miſbehaviour of the perſon or perſons to whom the ſame were ſo pledged or pawned, his, her or their agents or ſervants, either by wearing or uſing thereof, or by letting the ſame out to hire; Be it therefore enacted by the authority aforeſaid, That if in the courſe of any of the aforeſaid proceedings, before any juſtice or juſtices of the peace, in purſuance of, or under this act, it ſhall appear or be proved to the ſatisfaction of the juſtice or juſtices upon oath or ſolemn affirmation as aforeſaid, that any of the goods or chattels ſo pawned as aforeſaid, are become or have been rendered of leſs value than the ſame were at the time of pawning or pledging thereof, by or through the default, neglect, or wilful miſbehaviour of the perſon or perſons to whom the ſame were ſo pledged or pawned, his, her or their executors, adminiſtrators or aſſigns, agents or ſervants; then, and in any ſuch caſe, it ſhall be lawful, and every ſuch juſtice or juſtices is and are hereby required to allow or award a reaſonable ſatisfaction to the owner or owners of ſuch goods or chattels, in reſpect of ſuch damage; and the ſum or ſums of money ſo allowed or awarded ſhall be deducted out of the principal and intereſt, and allowance for warehouſe-room, which ſhall appear to be due to any perſon or perſons, to whom the ſame

Where goods pawned ſhall be damaged thro' neglect of the pawnbroker.

were ſo pledged or pawned, his, her or their executors, adminiſtrators or aſſigns; and in all caſes where the goods and chattels pawned as aforeſaid, ſhall have been damaged as aforeſaid, it ſhall be ſufficient for the pawner or pawners, his, her or their executors, adminiſtrators or aſſigns, to pay or tender the money upon the balance, after deducting out of the principal and intereſt, and money payable for warehouſe-room as aforeſaid, for the goods or chattels pawned, ſuch reaſonable ſatisfaction in reſpect to ſuch damage, as any ſuch juſtice or juſtices ſhall order or award; and upon ſo doing, the juſtice or juſtices ſhall proceed as if the pawner or pawners, his, her or their executors, adminiſtrators or aſſigns, had paid or tendered the whole money due for the principal, intereſt, and warehouſe-room as aforeſaid."

Perſons buying or taking in pledge linen or apparel, intruſted to others to waſh or mend, &c.

Sect. 6. "And be it enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September* one thouſand ſeven hundred and ſixty ſeven, if any perſon or perſons ſhall knowingly buy or take in as a pledge any linen or apparel, intruſted to any other perſon or perſons to waſh, ſcour, iron, mend or make up, and ſhall be convicted of the ſame, on the oath of one credible witneſs, or on confeſſion of the party, before one or more juſtice or juſtices, every ſuch perſon or perſons ſhall forfeit double the ſum given for or lent on the ſame, to be paid to the poor of the pariſh where the offence is committed, to be recovered in the manner other forfeitures are by this act directed to be recovered; and ſhall likewiſe be obliged to reſtore the ſaid goods to the owner in the preſence of the ſaid juſtice or juſtices."

to forfeit double the ſum,

and reſtore the goods.

Perſons offering goods to ſale, pawn or exchange, not giving a good account of themſelves,

Sect. 7. "And be it further enacted by the authority aforeſaid, That in caſe any perſon or perſons, who ſhall offer by way of pawn, pledge, exchange or ſale, any goods or chattels, ſhall not be able, or ſhall refuſe, to give a ſatisfactory account of himſelf, herſelf or themſelves, or of the means by which he, ſhe or they became poſſeſſed of ſuch goods or chattels; or if there ſhall be any other reaſon to ſuſpect that ſuch goods or chattels are ſtolen, or otherwiſe illegally or clandeſtinely obtained; it ſhall and may be lawful for any perſon or perſons, his, her or their ſervants or agents, to whom ſuch goods or chattels ſhall be ſo offered, to ſeize and detain ſuch perſon or perſons, and the ſaid goods or chattels, and to deliver ſuch perſon or perſons, as ſoon as conveniently may be, into the cuſtody of the conſtable, or other peace officer, who ſhall, and is hereby required, immediately to convey ſuch perſon or perſons, and the ſaid goods or chattels, before ſome juſtice or juſtices of the peace of the county, riding, diviſion, city, liberty or place, wherein the offence ſhall be committed; and if ſuch juſtice or juſtices ſhall, upon examination and enquiry, have cauſe to ſuſpect that the ſaid goods or chattels were ſtolen, or illegally or clandeſtinely obtained, it ſhall and may be lawful for ſuch juſtice or juſtices to commit ſuch perſon or perſons into ſafe cuſtody, for any time not exceeding the ſpace of ſix days, in order to be further examined; and if upon either of the ſaid examinations, it ſhall appear to the ſatisfaction of ſuch juſtice or juſtices, that the ſaid goods or chattels were ſtolen, or illegally or clandeſtinely obtained, the ſaid juſtice or juſtices is and are here-

may be detained, and carried before a juſtice.

Juſtice may commit the party.

by

by authorized and required to commit the party or parties offending to the common gaol or houſe of correction of the county, riding, diviſion, city, liberty or place, wherein the offence ſhall be committed, there to be dealt with according to law."

Sect. 8. "Provided nevertheleſs, and be it further enacted, That in caſe ſuch goods or chattels ſo ſeized and detained as aforeſaid, ſhall afterwards appear to be the property of the perſon or perſons who offered the ſame to be pawned, pledged, exchanged or ſold, or that he, ſhe or they was or were authorized by the owner or owners thereof to pawn, pledge, exchange or ſell the ſame then and in ſuch caſe, the perſon or perſons who ſhall ſo ſeize or detain the party or parties who offered the ſaid goods or chattels, ſhall be, and he, ſhe and they, is and are by this act indemnified for having ſo done."

The perſons detaining the party and goods, indemnified for ſo doing.

Sect. 9. "And, for the better enabling all perſons to recover their goods or chattels, which, after the ſaid twenty-ninth day of *September* one thouſand ſeven hundred and fifty-ſeven, ſhall be unlawfully pawned or pledged to, or exchanged with, any perſon or perſons whatſoever: Be it further enacted by the authority aforeſaid, That if the owner or owners of any goods or chattels, unlawfully pawned, pledged or exchanged, ſhall make out, either on his, her or their oath, or by the oath of any credible witneſs, or (being one of the people called *Quakers*) by ſolemn affirmation, before any juſtice or juſtices of the peace, within his or their juriſdiction, that ſuch owner or owners has or have had, his, her or their goods and chattels unlawfully obtained or taken from him, her or them, and that there is juſt cauſe to ſuſpect that any perſon or perſons, within the juriſdiction of any ſuch juſtice or juſtices, hath or have knowingly and unlawfully taken to pawn, or by way of pledge, or in exchange, any goods or chattels of ſuch owner or owners, and without the privity of, or authority from ſuch owner or owners thereof; and ſhall make appear, to the ſatisfaction of any ſuch juſtice or juſtices, probable grounds for ſuch the ſuſpicion of the owner or owners thereof; then and in any ſuch caſe, any juſtice or juſtices of the peace, within his or their juriſdiction, may iſſue his or their warrant for ſearching, in the day-time, the houſe, warehouſe or other place of any ſuch perſon or perſons, who ſhall be charged on oath or affirmation, as aforeſaid, as ſuſpected to have knowingly and unlawfully received or taken to pawn, or by way of pledge, or in exchange, any ſuch goods or chattels, without the privity of, or authority from the owner or owners thereof; and if the occupier or occupiers of any houſe, warehouſe or other place, wherein any ſuch goods or chattels ſhall, on oath or affirmation as aforeſaid, be charged or ſuſpected to be, ſhall after the ſaid twenty-ninth day of *September* one thouſand ſeven hundred and fifty-ſeven, on requeſt made to him, her or them, to open the ſame, by any peace officer authorized to ſearch there, by warrant from a juſtice or juſtices of the peace, for the county, riding, diviſion, city, liberty, town or place, in which ſuch houſe, warehouſe or other place ſhall be ſituate, refuſe to open the ſame, and permit the ſame to be ſearched, it ſhall be lawful for any ſuch peace officer to break open any ſuch houſe, warehouſe or other place, in the day-

Juſtice, upon oath of the owner, to iſſue a warrant to ſearch the ſuſpected perſon's houſe.

Upon refuſal of admittance, officer may break open the door.

time, and to ſearch as he ſhall think fit therein, for the goods or chattels ſuſpected to be there, doing no wilful damage; and if any perſon or perſons ſhall oppoſe or hinder any ſuch ſearch, and ſhall thereof be convicted before any ſuch juſtice or juſtices, by the oath of one or more credible witneſs or witneſſes, every perſon ſo offending in the premiſſes ſhall forfeit for every ſuch offence the ſum of five pounds; and in caſe ſuch forfeiture be not immediately paid down, or within the ſpace of twenty-four hours, the juſtice or juſtices, before whom ſuch conviction ſhall be had, ſhall commit the party or parties ſo convicted to the houſe of correction, or ſome other publick priſon of ſuch county, riding, diviſion, city, liberty, town or place, there to be kept to hard labour for any time not exceeding one month, nor leſs than five days, unleſs in the mean time ſuch forfeiture ſhall be paid; and ſuch forfeiture, when recovered, ſhall forthwith go and be applied to and for the uſe of the poor of the pariſh wherein ſuch offence ſhall have been committed; and if upon the ſearch of the houſe, warehouſe or other place, of any ſuch ſuſpected perſon or perſons, as aforeſaid, any of the goods or chattels which ſhall have been ſo knowingly and unlawfully pawned, pledged or exchanged, as aforeſaid, ſhall be found, and the property of the owner or owners from whom the ſame ſhall have been unlawfully obtained or taken, ſhall be made out, to the ſatisfaction of any ſuch juſtice or juſtices, by the oath of one or more credible witneſs or witneſſes, or (if any ſuch witneſs or witneſſes be of the people called *Quakers*) by ſolemn affirmation, or by the confeſſion of the perſon or perſons charged with any ſuch offence, any ſuch juſtice or juſtices ſhall thereupon cauſe the goods and chattels found on any ſuch ſearch, and unlawfully pawned, pledged or exchanged, as aforeſaid, to be forthwith reſtored to the owner or owners thereof."

Perſons hindering ſuch ſearch, forfeit 5 l.

and on non-payment, are to be committed to hard labour.

The goods found to be reſtored to the owner.

Sect. 10. "And whereas goods and chattels are often pawned or pledged for ſecuring the payment of money lent thereon, and the intereſt thereof; and altho' when the money becomes due, the borrowers, or their repreſentatives, are deſirous to repay the ſame, and the intereſt due thereon, and make tender thereof to the perſon or perſons with whom the ſame are ſo pawned or pledged, they are frequently under great difficulties to get back the goods and chattels ſo pawned, and are often under neceſſity to commence ſuits at law for the recovery thereof, to their great expence; for remedy whereof, Be it enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September* one thouſand ſeven hundred and fifty-ſeven, if any goods or chattels ſhall be pawned or pledged for ſecuring any money lent thereon, not exceeding in the whole the principal ſum of ten pounds, and the intereſt thereof; and if within two years after the pawning or pledging thereof, proof having been made on oath, by one or more credible witneſs or witneſſes, or by producing a duplicate of the entry directed to be given by this act as aforeſaid, before any ſuch juſtice or juſtices, or by ſolemn affirmation (if the perſon be of the people called *Quakers*) to the ſatisfaction of any ſuch juſtice or juſtices, of the pawning or pledging of any ſuch goods or chattels within the ſaid ſpace of two years, any ſuch pawner or pawners who was or were the real owner or owners of ſuch goods

Goods pawned for a ſum not exceeding 10 l. may be recovered within two years.

goods or chattels at the time of the pawning or pledging thereof, his, her or their executors, adminiſtrators or aſſigns, ſhall tender unto the perſon or perſons who lent on the ſecurity of the goods or chattels pawned, his executors, adminiſtrators or aſſigns, the principal money borrowed thereon, and all intereſt due for the ſame, together with ſuch charges for the warehouſe-room of the goods or chattels pawned, as ſhall be agreed on at the time of the pawning of ſuch goods and chattels; and the perſon who took ſuch goods or chattels in pawn, his executors, adminiſtrators or aſſigns, ſhall thereupon neglect or refuſe to deliver back the goods or chattels ſo pawned, for any ſum or ſums of money not exceeding the ſaid principal ſum of ten pounds, to the perſon or perſons who borrowed the money thereon, his, her or their executors, adminiſtrators or aſſigns; then, and in any ſuch caſe, on oath, or (if the perſon or perſons be of the people called *Quakers*) on ſolemn affirmation thereof, made by the pawner or pawners thereof, his, her or their executors, adminiſtrators or aſſigns, or ſome other credible perſon, any juſtice or juſtices of the peace of the county, riding, diviſion, city, liberty or place, where the perſon or perſons who took ſuch pawn as aforeſaid, his executors, adminiſtrators or aſſigns, ſhall dwell, on the application of the borrower or borrowers, his, her or their executors, adminiſtrators or aſſigns, is and are hereby required to cauſe ſuch perſon or perſons who took ſuch pawn, his, her or their executors, adminiſtrators or aſſigns, within the juriſdiction of the juſtice or juſtices, to come before ſuch juſtice or juſtices; and ſuch juſtice or juſtices is and are hereby authorized and required to examine on oath, or ſolemn affirmation, as the caſe may require, the parties themſelves, and ſuch other credible perſons as ſhall appear before him or them, touching the premiſſes; and if tender of the principal money due, and all intereſt thereof, together with charges for warehouſe-room, as aforeſaid, ſhall be proved by oath or affirmation, as aforeſaid, to have been made, ſuch principal money not exceeding the ſaid ſum of ten pounds, to the lender or lenders thereof, his, her or their executors, adminiſtrators or aſſigns, by the borrower or borrowers of ſuch principal money, his, her or their executors, adminiſtrators or aſſigns, within the ſaid ſpace of two years after the ſaid pawning or pledging of the goods or chattels, then on payment by the borrower or borrowers, his, her or their executors, adminiſtrators or aſſigns, of ſuch principal money, and the intereſt due thereon, together with ſuch charges for warehouſe-room of the goods or chattels ſo pawned or pledged as aforeſaid, to the lender or lenders, his, her or their executors, adminiſtrators or aſſigns; and in caſe the lender or lenders, his, her or their executors, adminiſtrators or aſſigns, ſhall refuſe to accept thereof, on tender thereof to him, her or them made, by the borrower or borrowers thereof, his, her or their executors, adminiſtrators or aſſigns, before any ſuch juſtice or juſtices, ſuch juſtice or juſtices ſhall thereupon, by order under his hand, or their hands, direct the goods or chattels ſo pawned, forthwith to be delivered up to the pawner or pawners thereof, his, her or their executors, adminiſtrators or aſſigns: And if the perſon or perſons, who ſhall have lent any principal ſum or ſums of money, not exceeding in the whole the ſaid ſum of ten pounds,

Juſtice, on complaint of pawnbroker refuſing to deliver goods, to ſummon and examine the parties;

and proof being made of tender, and payment of the principal intereſt and charges;

or tender being then alſo made, and refuſed;

juſtice to make an order for the immediate delivery of the goods,

on refuſal, to commit the

pawnbroker till ſatisfaction be made.

pounds, on any goods or chattels pawned, his, her or their executors, adminiſtrators or aſſigns, ſhall neglect or refuſe to deliver up or make ſatisfaction for the goods or chattels, which ſhall be proved, to the ſatisfaction of ſuch juſtice or juſtices as aforeſaid, to have been ſo pawned, as any ſuch juſtice or juſtices of the peace, as aforeſaid, ſhall order and direct; then any ſuch juſtice or juſtices ſhall, and is and are hereby authorized and required to commit the party or parties, ſo refuſing to deliver up or make ſatisfaction for the ſame, to the houſe of correction, or ſome other publick priſon of the county, riding, diviſion city or place, wherein the offender or offenders ſhall reſide, or be convicted; there to remain without bail or mainprize, until he, ſhe or they, ſhall deliver up the goods or chattels ſo pawned, and continuing redeemable, as aforeſaid, according to the order of ſuch ſaid juſtice or juſtices, or make ſatisfaction or compenſation for the value thereof, to the party or parties intitled to the redemption of ſuch goods or chattels ſo pawned, and continuing redeemable as aforeſaid."

Goods remaining unredeemed for 2 years, are forfeited, and may be ſold; overplus to be accounted for.

Sect. 11. "And be it further enacted by the authority aforeſaid, That if any pawn or pledge of goods or chattels, of what kind ſoever, made by or for the proprietor or proprietors thereof, ſhall remain unredeemed for the ſpace of two years, then every ſuch pawn or pledge ſhall be forfeited; and it ſhall and may be lawful to and for every ſuch perſon or perſons, to whom ſuch goods or chattels have been pawned or pledged, to ſell the ſame; any law, ſtatute, cuſtom or uſage to the contrary thereof notwithſtanding; ſubject nevertheleſs to account for the overplus, if any ſhall be, of the produce of all ſuch goods or chattels which have been pledged for two pounds and upwards, as by this act directed."

Entry to be made of ſale of goods pawned for 2 l. or upwards.

Sect. 12. "Provided always, and be it further enacted by the authority aforeſaid, That every perſon or perſons, to whom any goods or chattels ſhall have been pawned or pledged, ſhall from time to time enter in a book or books to be kept for that purpoſe, a true and juſt account of the ſale of all goods and chattels pawned to him, or them, for two pounds, or upwards, which ſhall be ſold by any ſuch perſon or perſons, expreſſing the day when, the money for which, and the name and place of abode of the perſon to whom ſuch goods or effects pawned were ſold; and in caſe any ſuch goods or effects ſhall be ſold for more than the principal money, with intereſt, and the charge of warehouſe-room, as aforeſaid, due thereon at the time of ſuch ſale, the overplus ſhall by every ſuch perſon or perſons be paid on demand to the perſon by or on whoſe account ſuch goods or chattels were pawned, his, her or their executors, adminiſtrators or aſſigns; and ſuch perſon or perſons who pawned or pledged ſuch goods or chattels, his her or their executors, adminiſtrators or aſſigns, ſhall, for his her or their ſatisfaction in this matter, be permitted to inſpect the entry to be made as aforeſaid of every ſuch ſale, paying for ſuch inſpection the ſum of one penny, and no more; and in caſe any perſon or perſons ſhall refuſe to permit any ſuch perſon or perſons, who pawned or pledged ſuch goods or chattels, to inſpect ſuch entry as aforeſaid in any ſuch book or books, ſuch perſon or perſons, if an executor or executors, adminiſtrator or adminiſtrators, or aſſignee or aſſignees, at ſuch time producing his, her or their letters teſta-

Overplus ariſing from the ſale, to be paid on demand to the owner;

On refuſal of inſpection,

teſtamentary, letters of adminiſtration or aſſignment; or in caſe the goods or effects were ſold for more than the ſum entered in any ſuch book or books; or if any ſuch perſon or perſons ſhall not make ſuch entry, or ſhall not have *bona fida* ſold the goods or chattels pawned for the beſt price that he, ſhe or they might have reaſonably had or got for the ſame, without his, her or their wilful default; or ſhall refuſe to pay ſuch overplus, upon demand, to the pawner or pawners, his, her or their executors, adminiſtrators or aſſignes; he or they producing ſuch letters teſtamentary, letters of adminiſtration or aſſignment; every ſuch perſon or perſons ſo offending ſhall for every ſuch offence forfeit treble the value of ſuch goods and chattels to the perſon or perſons by whom, or on whoſe account, ſuch goods or chattels were pawned, his, her or their executors, adminiſtrators or aſſigns, to be recovered by action of debt, bill, plaint or information, in any of his majeſty's courts of record at *Weſtminiſter*."

or the goods being ſold for more than entered, &c.

Pawnbroker to forfeit treble the value.

Sect. 13. "Provided always, and be it further enacted by the authority aforeſaid, That no fee or gratuity whatſoever ſhall be had, taken or received, for any ſummons or ſummonſes, warrant or warrants, granted by any juſtice or juſtices of the peace, in purſuance of this act, ſo far as the ſame relates to goods and chattels pawned, pledged, taken in exchange, or unlawfully diſpoſed of."

Sommonſes and warrants to be iſſued without fee.

Sect. 14. "And whereas the occupiers of many licenſed publick houſes, and of other houſes wherein wines and liquors are ſold, frequently ſuffer gaming therein, and journeymen, labourers, ſervants and apprentices by means of ſuch gaming therein, not only miſ-ſpend their time, but are often reduced to poverty and great diſtreſs; Be it therefore further enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September* one thouſand ſeven hundred and fifty-ſeven, if any perſon or perſons licenſed to ſell any ſorts of liquors, or who ſhall ſell, or ſuffer the ſame to be ſold, in his, her or their houſe or houſes, or in any outhouſes, ground or apartments thereto belonging, ſhall knowingly ſuffer any gaming with cards, dice, draughts, ſhuffle-boards, miſſiſſipi or billiard tables, ſkittles, nine pins, or with any other implement of gaming, in his, her or their houſes, outhouſes, ground or apartments thereto belonging, by any ſuch journeymen, labourers, ſervants or apprentices; and ſhall be convicted of the ſaid offence on their own confeſſion, or on the oaths of one or more credible witneſs or witneſſes, before any juſtice or juſtices of the peace for the county, riding, diviſion, city, liberty or place, wherein the offence ſhall be committed, within ſix days after any offence ſhall be committed he, ſhe or they ſo offending, ſhall for every ſuch offence forfeit and pay the ſum of forty ſhillings; and for every like offence which he, ſhe or they ſhall afterwards be convicted of, before any ſuch juſtice or juſtices of the peace, he, ſhe or they ſo offending, ſhall forfeit the ſum of ten pounds; all which ſums of money, ſo forfeited, ſhall be levied by diſtreſs and ſale of the offenders goods and chattels, by warrant from the juſtice or juſtices before whom ſuch offender or offenders ſhall be convicted; and which warrant every ſuch juſtice or juſtices is and are hereby required and authorized to grant; and three fourths of all ſums which ſhall be ſo forfeited,

Publicans permitting journeymen, &c. to game in their houſes, forfeit 40s. and for every ſubſequent offence, 10l. to be levied by diſtreſs and ſale.

feited ſhall, on the recovery thereof, be paid to the churchwardens of the pariſh in which the offence ſhall be committed, for the uſe of the poor of ſuch pariſh; and the other fourth part thereof ſhall be paid to the perſon or perſons on whoſe information the party or parties offending ſhall have been convicted of the offence."

On complaint of journeymen, &c. gaming in publik houſes, juſtice to iſſue his warrant for apprehending them,

Sect. 15. "And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-ninth day of *September* one thouſand ſeven hundred and fifty-ſeven, if any journeyman, labourer, apprentice or ſervant, ſhall game in any houſe, out-houſe, ground or apartments thereto belonging wherein any liquors ſhall be ſold, and complaint thereof ſhall be made on oath before any juſtice or juſtices of the peace for the county, riding diviſion, city, liberty or place where the offence ſhall have been committed, every ſuch juſtice or juſtices ſhall thereupon iſſue his or their warrant to ſome conſtable, tythingman, headborough or other peace officer of the pariſh, precinct or place, wherein the offence ſhall be charged to have been committed, or where the offender ſhall reſide, to apprehend and carry every ſuch offender before ſome juſtice or juſtices of the peace acting for the county, riding, diviſion, city, liberty or place, where the offence ſhall be committed, or where the offender ſhall reſide; and if the perſon who ſhall be apprehended ſhall be convicted of the ſaid offence by the oath of one or more credible witneſs or witneſſes, or on his own confeſſion, every ſuch offender ſhall forfeit any ſum not exceeding twenty ſhillings, nor leſs than five ſhillings, as the juſtice or juſtices before whom any ſuch offender or offenders ſhall be convicted ſhall think fit and order, every time he ſhall ſo offend, and be convicted as aforeſaid; and one fourth of all ſuch money ſo forfeited ſhall, on the conviction of any ſuch offender or offenders, be paid to the perſon or perſons on whoſe information the party or parties offending ſhall be convicted, and the other three fourths thereof ſhall be applied for the uſe of the poor of the pariſh wherein the offence ſhall have been committed, and ſhall be paid to the overſeers of the poor of ſuch pariſh for that purpoſe; and if the party who ſhall be convicted of the offence laſt-mentioned, ſhall not forthwith pay down the ſaid ſum ſo forfeited by him, any ſuch juſtice or juſtices ſhall, by warrant under his hand, or their hands, commit every ſuch offender to the houſe of correction, or ſome other priſon, of the county, riding diviſion, city, liberty or place, in which he ſhall be apprehended; there to remain and be kept to hard labour for any time not exceeding the ſpace of one month, or until he ſhall pay the ſum of money ſo forfeited."

who upon conviction are to forfeit not exceeding 20s. nor leſs than 5 s.

Offender not paying the forfeiture, to be committed to hard labour.

Juſtice, upon complaint, to iſſue his warrant for bringing the offender before him.

Sect. 16. "And be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for any juſtice or juſtices of the peace of any county, riding, diviſion, city, liberty, town or place, and he and they is and are hereby required, upon complaint made to him upon oath of any offence committed againſt this act, within the ſame county, riding, diviſion, city, liberty, town or place, to iſſue his warrant for bringing before him, or ſome other juſtice or juſtices of the peace of any county, riding, diviſion, city, liberty, town or place, the perſon or perſons charged with ſuch offence, and the juſtice or juſtices before whom ſuch perſon or perſons

ſhall

ſhall be brought, is hereby authorized and required to hear and determine the matter of every ſuch complaint, and to proceed to judgment and conviction thereupon, as by this act is directed; and if it ſhall appear by oath of any credible perſon or perſons, to the ſatisfaction of any ſuch juſtice or juſtices, that any perſon or perſons, within the juriſdiction of ſuch juſtice or juſtices, can give or offer material evidence on behalf of the proſecutor, againſt any offender or offenders againſt the true intent and meaning of this act, or on behalf of the perſon accuſed, and who will not voluntarily appear before ſuch juſtice or juſtices to be examined, and give his, her or their evidence, concerning the premiſſes; every ſuch juſtice or juſtices is and are hereby authorized and required to iſſue his or their ſummons, to convene every ſuch perſon or perſons within his or their juriſdiction before him or them, to be examined upon oath concerning the premiſſes; and if any perſon ſo ſummoned ſhall neglect or refuſe to appear on ſuch ſummons, and no juſt excuſe ſhall be offered for ſuch neglect or refuſal, then (after proof by oath of ſuch ſummons having been duly ſerved upon him, her or them for that purpoſe) any ſuch juſtice or juſtices is and are hereby authorized and required to iſſue his or their warrant to bring every ſuch witneſs and witneſſes, within his or their juriſdiction, before him or them; and on the appearance of any ſuch witneſs before any ſuch juſtice or juſtices, any ſuch juſtice or juſtices is and are hereby authorized and impowered to examine upon oath every ſuch witneſs; and if any ſuch witneſs, on his or her appearance, or being brought before any ſuch juſtice or juſtices, ſhall refuſe to be examined on oath concerning the premiſſes, without offering any juſt cauſe for ſuch refuſal, it ſhall be lawful for any ſuch juſtice or juſtices, by warrant under his or their hand and ſeal, or hands and ſeals, to commit every perſon ſo refuſing to the publick priſon of the county, riding, diviſion, city or place, in which the perſon or perſons ſo refuſing to be examined on oath, ſhall be brought before any ſuch juſtice or juſtices, there to remain for any time not exceeding three months, as any ſuch juſtice or juſtices ſhall direct; and if on ſuch examination, any ſuch juſtice or juſtices ſhall deem the evidence of any ſuch witneſs or witneſſes to be material, any ſuch juſtice or juſtices may bind over any ſuch witneſs, unleſs a feme covert, or one under the age of twenty-one years, by recognizance, in a reaſonable penalty, to appear and give evidence at the next general or quarter-ſeſſions of the peace, or ſeſſions of *oyer* and *terminer*, as in ſuch recognizance ſhall be mentioned."

and may ſummon witneſſes.

and if the witneſs refuſes to give evidence, he may be committed to hard labour.

Material witneſs may be bound over to give evidence before a court.

Sect. 17. "And be it further enacted by the authority aforeſaid, That no perſons charged on oath with being guilty of any of the offences puniſhable by this act, and which ſhall require bail, ſhall be admitted to bail before twenty-four hours notice, at leaſt, ſhall be proved by oath to have been given in writing to the proſecutor, of the names and places of abode of the perſons propoſed to be bail for any ſuch offender or offenders, unleſs the bail offered ſhall be well known to the juſtice or juſtices, and he and they ſhall approve of them; and every ſuch offender and offenders, who ſhall be bound over to the general quarter-ſeſſions of the peace, or gaol-delivery of the county, city or town wherein the offence charged on him ſhall have been committed, to anſwer any ſuch offences puniſhable by this act, ſhall

Offenders not to be admitted to bail, till due notice has been given to the proſecutor, &c.

Offender to be tried at the next ſeſſion, unleſs the court put off the trial.

ſhall be tried at ſuch general quarter-ſeſſions of the peace, or ſeſſions of *Oyer* and *Terminer* and gaol-delivery which ſhall be held next after his, her or their being apprehended, unleſs the court ſhall think fit to put off the trial on juſt cauſe made out to them.

Inhabitants where the offence is committed, deemed competent witneſſes.

Sect. 18. Provided always, and be it enacted by the authority aforeſaid, That in all actions, ſuits, trials and other proceedings in purſuance of this act, or in relation to any matter or thing herein contained, any inhabitant of the pariſh, town or place, in which any offence or offences ſhall be committed, contrary to the true intent and meaning of this act, ſhall be admitted to give evidence, and ſhall be deemed a competent witneſs, notwithſtanding his, her or their being an inhabitant or inhabitants of the pariſh, town or place wherein any ſuch offence or offences ſhall have been committed.

Conviction to be drawn up in the following form;

Sect. 19. "And be it further enacted by the authority aforeſaid, That the juſtice or juſtices before whom any perſon ſhall be convicted, in manner preſcribed by this act, ſhall cauſe ſuch reſpective conviction to be drawn up in the form or to the effect following; that is to ſay,

To wit. { BE it remembered, That on this Day of in the Year of his Majeſty's Reign, *A. B.* is convicted before of his Majeſty's Juſtices of the Peace, for the ſaid county of or for the Riding or Diviſion of the ſaid County of or for the City, Liberty or Town of *(As the Caſe ſhall happen to be)* for and the ſaid do adjudge him or her to pay and forfeit for the ſame, the ſum of

Given under the Day and Year aforeſaid.

and to be written on parchment, and tranſmitted to the quarter-ſeſſions to be filed.

And the ſaid juſtice or juſtices, before whom ſuch conviction ſhall be had, ſhall cauſe the ſame ſo drawn up, in the form aforeſaid, to be fairly written upon parchment, and tranſmitted to the next general quarter-ſeſſion of the peace to be held for the county, riding, diviſion, city, town, liberty or place wherein ſuch conviction was had, to be filed and kept amongſt the records of the ſaid general or quarter-ſeſſions; and in caſe any perſon or perſons ſo convicted, ſhall appeal from the judgment of the ſaid juſtice or juſtices, to the ſaid general or quarter-ſeſſions, the juſtices in ſuch general or quarter-ſeſſions are hereby required upon receiving the ſaid conviction, drawn up in the form aforeſaid, to proceed to the hearing and determination of the matter of the ſaid appeal, according to the directions of this act; any law or uſage to the contrary notwithſtanding.

Juſtices at the quarter ſeſſions to determine appeals.

Indictment or conviction not removeable by certiorari.

Sect. 20. "And be it further enacted by the authority aforeſaid, That no *certiorari* ſhall be granted to remove any indictment, conviction or other proceedings had thereon in purſuance of this act.

Appeal may be made to the quarter-ſeſſions;

Sect. 21. "Provided always, and it is hereby further enacted by the authority aforeſaid, That if any perſon convicted of any offences puniſhable by this act, ſhall think him or herſelf aggrieved by the judgment of the juſtice or juſtices before whom he or ſhe ſhall have been convicted,

ſuch

ſuch perſons ſhall have liberty to appeal to the juſtices at the next general or quarter-ſeſſions of the peace which ſhall be held for the county, riding, diviſion, city, liberty, town or place, where ſuch judgment ſhall have been given; and that the execution of the ſaid judgment ſhall, in ſuch caſe, be ſuſpended, the perſon ſo convicted entering into a recognizance at the time of ſuch conviction, with two ſufficient ſureties, in double the ſum which ſuch perſon ſhall have been adjudged to pay or forfeit, upon condition to proſecute ſuch appeal with effect, and to be forth-coming, to abide the judgment and determination of the juſtices in their ſaid next general or quarter-ſeſſions; which recognizance the ſaid juſtice or juſtices, before whom ſuch conviction ſhall be had, is hereby impowered and required to take; and the juſtices in the ſaid general or quarter-ſeſſions are hereby authorized and required to hear and finally determine the matter of the ſaid appeal, and to award ſuch coſts as to them ſhall appear juſt and reaſonable to be paid by either party; and if, upon the hearing of the ſaid appeal, the judgment of the juſtice or juſtices, before whom the appellant ſhall have been convicted, ſhall be affirmed, ſuch appellant ſhall immediately pay the ſum which he or ſhe ſhall have been adjudged to forfeit, together with ſuch coſts as the juſtices in the ſaid general or quarter-ſeſſions ſhall award to be paid, for defraying the expences ſuſtained by the defendant or defendants in ſuch appeal; or in default of making ſuch payments, ſhall ſuffer the reſpective pains and penalties by this act inflicted upon perſons reſpectively, who ſhall neglect to pay, or ſhall not pay the reſpective ſums or forfeitures by this act, to be paid by, or impoſed upon, perſons reſpectively, who ſhall be convicted by virtue of this act.

and execution reſpited, the party entering into recognizance to proſecute the appeal.

Juſtices to determine the appeal, and award coſts.

On affirmation of the judgment, appellant to pay the fine and coſts.

Sect. 22. "And be it further enacted by the authority aforeſaid, That no perſon, who, by virtue of this act, ſhall be puniſhed for any offence or offences by him, her or them committed, ſhall be puniſhed for the ſame offence or offences, under any other law or ſtatute; and that if any action or ſuit ſhall be commenced againſt any perſon or perſons for any thing done in purſuance of this act, the defendant or defendants in any ſuch action or ſuit may plead the general iſſue, and give this act and the ſpecial matter in evidence, at any trial to be had thereupon, and that the ſame was done in purſuance and by the authority of this act; and if it ſhall appear ſo to have been done, or a verdict ſhall be recorded for the defendant or defendants; and if the plaintiff ſhall be nonſuited or diſcontinue his action, after the defendant or defendants ſhall have appeared; or if judgment ſhall be given upon any verdict or demurrer againſt the plaintiff, the defendant or defendants ſhall and may recover double coſts, and have the like remedy for the ſame, as any defendant or defendants hath or have in other caſes by law, for recovery of his or their coſts.

None to be puniſhed a ſecond time for the ſame offence.

General iſſue.

Double coſts.

Sect. 23. "And be it further enacted by the authority aforeſaid, That the ſtatute made in the twenty-fourth year of his preſent majeſty's reign, intituled, "An act for the rendering the juſtices of the peace more ſafe in the execution of their office, and for indemnifying conſtables and others acting in obedience to their warrant," ſo far as the ſaid act relates to the rendering the juſtices more ſafe in the execution of their office, ſhall extend and be conſtrued to extend to the juſtice or juſtices of the peace acting under

Clauſe in act 24 G. 2. c. 44. extended to juſtices acting under this act.

Notice to be given to peace officer, before commencing the ſuit againſt him.

the authority or in execution of this act; and no action or ſuit ſhall be had or commenced againſt, or writ iſſued out, or copy or writ ſerved upon any peace officer or officers, for any thing done in the execution of this act, until notice in writing ſhall have been given to him or them, or left at his or their uſual place of abode, by the attorney for the party commencing ſuch action, or ſuing out or ſerving the copy of the ſaid writ; which ſaid notice in writing ſhall contain the name and place of abode of the perſon who is to bring ſuch action, together with the cauſe of action or complaint; and the name and place of abode of the ſaid attorney ſhall be under-wrote or indorſed thereon; and any peace officer or officers ſhall be at liberty, and may by virtue of this act, at any time within fourteen days after ſuch notice, tender or cauſe to be tendered any ſum or ſums of money, as amends for the injury complained of, to the party complaining, or to the ſaid attorney; and if the ſame is not accepted of, the defendant or defendants, in ſuch action or actions, may plead ſuch tender in bar of ſuch action or actions, together with the general iſſue, or any other plea, with leave of the court; and if upon iſſue joined upon ſuch tender, the jury ſhall find the amends tendered to have been ſufficient, the ſaid jury ſhall find a verdict for the defendant or defendants; and in ſuch caſe, or if the plaintiff ſhall become nonſuit or diſcontinue his action, or if judgment ſhall be given for the defendant or defendants upon demurrer, the defendant or defendants ſhall be intitled to his and their coſts; and if the jury ſhall find that no ſuch tender was made, or that the amends tendered were not ſufficient, and alſo ſhall find againſt the defendant or defendants on ſuch other plea or pleas by them pleaded, the ſaid jury ſhall give a verdict for the plaintiff, and ſuch damages as they ſhall think proper, for which the plaintiff ſhall have judgment, together with his, her or their full coſts."

Tender of amends may be made by him,

and pleaded in bar of the action.

If none, or inſufficient tender has been made, plaintiff, upon a verdict, to recover.

Church and Church-yard.

LORD *Coke* ſays, that by the common law and general cuſtom of the realm, it was lawful for biſhops, earls and barons to build churches or chapels within their fees; and hereof king *John* informed pope *Innocent* the third (naming only, *honoris cauſa*, the biſhops and baronage of *England*, albeit this liberty extended to all,) with requeſt, that this liberty to the baronage might be confirmed. To theſe letters the pope made this anſwer, *Quod enim de conſuetudine regni Anglorum procedere regia ſerenitas per ſuas literas intimavit, ut liceat tam epiſcopis, quam comitibus et baronibus, eccleſias in feodo ſuo fundare; laicis quidem principibus id licere nullatenus denegamus, dummodo dioceſani epiſcopi eis ſuffragetur aſſenſus, et per novam ſtructuram veterum eccleſiarum juſtitia non lædatur.* Whereas the baronage had abſolute liberty before, now the pope addeth the conſent of the biſhop; but that addition

addition bound not, ſeeing it was againſt the liberty of the baronage warranted by the common law; and he ſays he would not have rehearſed this epiſtle, but that it is a proof what the general cuſtom of the realm was, concerning the building of churches by the baronage of *England*. And albeit they might build churches without the king's licence, yet could they not erect a ſpiritual politic body to continue in ſucceſſion, and capable of endowment, without the king's licence: but by the common law, before the ſtatute of mortmain, they might have endowed this ſpiritual body once incorporated, *perpetuis futuris temporibus*, without any licence from the king or any other. 3 *Inſt.* 201, 202. Which body ſo incorporated, is not diſſolved, tho' the church is drowned, or otherwiſe deſtroyed; but in that caſe, one may be preſented to the rectory, and ſhall be liable to annuities and other charges; the church in conſideration of law, being properly the *cure of ſouls* and the *right of tithes*. *Gibſ.* 189.

But Dr. *Gibſon* obſerveth on the contrary, that no perſon may erect a church without the leave and conſent of the biſhop. And this he ſays, is agreeable to the rule, both of the civil and canon law, and was made an expreſs law of the church of *England* many years before the reign of king *John*, *viz.* in the council of *Weſtminſter* in the time of king *Stephen*. Nor could this right of the biſhop be defeated by the exemption of religious perſons from epiſcopal juriſdiction; who might not, under colour of ſuch exemptions, erect churches in any part of their poſſeſſions not exempt, without leave from the biſhop; as we find it eſpecially adjudged, in the body of canon law. And to this, the pope's anſwer to king *John* is exactly agreeable, *laicis quidem principibus id licere nullatenus denegamus, dummodo dioceſani epiſcopi eis ſuffragetur aſſenſus*. And king *John*'s letter doth not relate to a right of erecting with or without licence; ſince the occaſion of it was, the building of a collegiate chapel by the archbiſhop, who was his own licence; and the only objection was, that the building of it would be prejudicial to the church of *Canterbury*. *Gibſ.* 188. 1 *Burn Ec. L.* 232.

But it is to be obſerved, that theſe two aſſertions are not contradictory; for the one ſays only, that by the civil and canon law it might not be done; and the other ſays, that it might be done by the common law, altho' Lord *Coke* produceth no inſtances, before the reign of king *John* or after, of churches erected without the licence of the dioceſan. And it ſeemeth to amount to the ſame thing, ſo long as the biſhop hath power (unto which Lord *Coke* aſſenteth) after the church is erected, to with-hold or deny the conſecration. 1 *Burn Ec. L.* 233.

And not only the biſhop, by refuſing to conſecrate, may hinder the eſtabliſhment of a new church or chapel in any pariſh; but alſo any other perſon thinking himſelf injured thereby, as by incroaching upon his ground, ſtopping his way, or the like, may apply to the temporal courts, who (as they ſee cauſe) will grant him redreſs. 1 *B. Ec. L.* 233.

The ancient manner of founding churches was, after the founders had made their application to the biſhop of the dioceſe, and had his licence,

the biſhop or his commiſſioners ſet up a croſs, and ſet forth the ground, where the church was to be built; and then the founders might proceed in the building of the church, and when the church was finiſhed, the biſhop was to conſecrate it, but not till it was endowed, and before the ſacraments were not to be adminiſtered in it. *Degge, part* 1. *c.* 12.

For albeit churches or chapels may be built by any of the king's ſubjects, yet before the law takes notice of them to be churches or chapels, the biſhop is to conſecrate or dedicate the ſame. And this is the reaſon, that a church or not a church, a chapel or not a chapel, ſhall be tried and certified by the biſhop. 3 *Inſt.* 203.

Original of church-yards.

The churchyard is called a dormitory, (from *dormio*, to ſleep) becauſe the dead bodies are ſaid there to ſleep until the reſurrection. 2 *Inſt.* 489.

As to the original of burying places, many writers have obſerved, that at the firſt erection of churches, no part of the adjacent ground was allotted for interment of the dead, but ſome place for this purpoſe was appointed at a further diſtance. Eſpecially in cities and populous towns; where agreeably to the old *Roman* law of the twelve tables, the place of inhumation was without the walls, firſt indefinitely by the way ſide, then in ſome peculiar incloſure aſſigned to that uſe. Therefore the *Roman* pontifical, amongſt other inventions, is in this reſpect convicted of error, that it makes pope *Marcellus* under the tyrant *Maxentius* appoint twenty-five churches in *Rome* to bury martyrs in, when at that time laws and cuſtoms did forbid all burial within the city. Hence the *Auguſtine* monaſtery was built without the walls of *Canterbury* (as *Ethelbert* and *Auguſtine* in both their charters intimate) that it might be a dormitory to them and their ſucceſſors the kings and archbiſhops for ever. This practice of remoter burials continued to the age of *Gregory* the great, when the monks and prieſts, beginning to offer for ſouls departed, procured leave for their greater eaſe and profit, that a liberty of ſepulture might be in churches, or in churches adjoining to them. This mercenary reaſon ſeems to be acknowledged by pope *Gregory* himſelf, whilſt he allows, that when the parties deceaſing are not burdened with heavy ſins, it may then be a benefit to them to be buried in churches; becauſe their friends and relations, as often as they come to theſe ſacred places, ſeeing their graves, may remember them, and pray to *God* for them. After this, *Cuthbert* archbiſhop of *Canterbury* brought over from *Rome* this practice into *England*, about the year 750; from which time they date the original of church-yards in this iſland. This was a ſufficient argument of the learned Sir *Henry Spelman*, to prove an inſcription at *Glaſtenbury* to be a later forgery; becauſe it pretends, *dominus eccleſiam ipſam cum cœmeterio dedicarat*, whereas there was no cœmetery in *England* till above 700 years after the date of that fiction. The practice of burying within the churches did indeed (though more rarely) obtain before the uſe of church-yards; but was by authority reſtrained, when church-yards were frequent, and appropriated to that uſe. For among thoſe canons which ſeem to have been made before *Edward* the confeſſor, the ninth bears this title *De non ſepeliendo in eccleſiis*, and begins with

with a confeſſion that ſuch a cuſtom had prevailed, but muſt be now reformed, and no ſuch liberty allowed for the future, unleſs the perſon be a prieſt or ſome holy man, who by the merits of his paſt life might deſerve ſuch a peculiar favour. However, at firſt it was the nave or body of the church, that was permitted to be a repoſitory of the dead, and chiefly under arches by the ſide of the walls. *Lanfrank*, archbiſhop of *Canterbury*, ſeems to have been the firſt, who brought up the practices of vaults in chancels, and under the very altars, when he had rebuilt the church of *Canterbury*, about the year 1075. *Ken. Par. Ant.* 592, 593.

Stat. 13 *Ed.* 1. *ſt.* 2. *c.* 6. [*A. D.* 1285.] *partly intituled* "fairs or markets ſhall not be kept in church-yards." "And the king commandeth and forbideth, that from henceforth neither fairs nor markets be kept in church-yards for the honour of the church."

Stat. 50 *Ed.* 3. *c.* 5. [*A. D.* 1376. *intituled*] "None ſhall arreſt prieſts or clerks doing divine ſervice."

Item, Becauſe that complaint is made to our lord the king by the clergy of his ſaid realm of *England*, that as well divers prieſts bearing the ſweet body of our lord *Jeſus Chriſt* to ſick people and their clerks with them, as otherwiſe divers other perſons of holy church, whiles they attend to divine ſervices in churches, churchyards, and other places dedicate to *God*, be ſundry times taken and arreſted, by authority royal, and commandment of other temporal lords, in offence of *God*, and of the liberties of holy church, and alſo in diſturbance of divine ſervices aforeſaid; (2) the ſame our lord the king, who would be ſore diſpleaſed if any did in ſuch manner, will and granteth, and defendeth upon grievous forfeiture, that none do the ſame from henceforth, ſo that colluſion or feigned cauſe be not found in any of the ſaid perſons of holy church in this behalf." 1 R. 2. c. 15.

Stat. 1 *Ric.* 2. *c.* 15 [*A. D.* 1378. *intituled*] "The penalty for arreſting of prieſts doing divine ſervice."

Item, Becauſe that prelates do complain themſelves, that as well beneficed people of holy church, as other, be arreſted and drawn out as well of cathedral churches, as of other churches and their churchyards, and ſometime whiles they be intended to divine ſervices, and alſo in other places, although they be bearing the body of our lord *Jeſus Chriſt* to ſick perſons, and ſo arreſted and drawn out, be bound and brought to priſon, againſt the liberty of holy church: (2) It is ordained, that if any miniſter of the king, or other, do arreſt any perſon of holy church by ſuch manner, and thereof be duly convict, he ſhall have impriſonment, and then be ranſomed at the king's will, and make gree to the parties ſo arreſted; (3) provided always, that the ſaid people of holy church ſhall not hold them within the churches or ſanctuaries by fraud or colluſion in any manner. (4) And therefore we command, that thou cauſe all the ſaid ſtatutes to be cried and publiſhed, and firmly kept through thy bailiwick, according to the form and tenour thereof 50 Ed. 3. c. 5. 1 Mar. ſeſſ. 2. c. 3. 2 Bulſt. 72. 2 Cr. 321. pl. 4. Brown. 301.

thereof, and that do not omit in any wiſe. Given under the witneſs of our great ſeal the firſt day of *February* in the firſt year of our reign.

Alſo it is ſaid, that arreſts in civil caſes ought not to be of perſons going to or coming from church; but that a warrant from a juſtice of the peace for the king may be executed in ſuch caſe. *Cro. Car.* 602. *Cro. Jac.* 321. 2 *Bulſt.* 72. But although the officer may be puniſhed for the arreſt either in the ſpiritual or temporal courts, yet the arreſt (if not on a *Sunday*) is good in law. *Watſon's Comp. Incumb. c.* 34. *p.* 344.

Stat. 5 & 6 *Ed.* 6. *c.* 4. [*A. D.* 1552. *intituled*] "Againſt quarrelling and fighting in churches and church-yards."

The penalty for ſtriking or drawing a weapon in church or church-yard. Hetley 86.

Foraſmuch as of late divers and many outragious and barbarous behaviours and acts have been uſed and committed by divers ungodly and irreligious perſons, by quarrelling, brawling, fraying and fighting openly in churches and church-yards: (2) Therefore it is enacted by the king our ſovereign lord, with the aſſent of the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon whatſoever ſhall, at any time after the firſt day of *May* next coming, by words only, quarrel, chide or brawl in any church or church-yard, that then it ſhall be lawful unto the ordinary of the place where the ſame offence ſhall be done, and proved by two lawful witneſſes, to ſuſpend every perſon ſo offending; that is to ſay, if he be a layman, *ab ingreſſu eccleſiæ*, and if he be a clerk, from the miniſtration of his office for ſo long time as the ſaid ordinary ſhall by his diſcretion think meet and convenient, according to the fault."

The penalty for ſmiting in a church, &c.

Sect. 2. "And further it is enacted by the authority aforeſaid, That if any perſon or perſons, after the ſaid firſt day of *May* ſhall ſmite or lay any violent hands upon any other, either in any church or church-yard, that then *ipſo facto* every perſon ſo offending ſhall be deemed excommunicate, and be excluded from the fellowſhip and company of chriſt's congregation."

The penalty for drawing or ſmiting with a weapon in the church, &c. 2 Leon. 188. Cro. Jac. 462. 1 Rol 90.

Sect. 3. "And alſo it is enacted by the authority aforeſaid, That if any perſon after the ſaid firſt day of *May* ſhall maliciouſly ſtrike any perſon with any weapon in any church or church-yard, or after the ſame firſt day of *May* ſhall draw any weapon in any church or church-yard, to the intent to ſtrike another with the ſame weapon, that then every perſon, ſo offending, and thereof being convicted by verdict of xij. men, or by his own confeſſion, or by two lawful witneſſes, before the juſtices of aſſiſe, juſtices of *Oyer* and *Determiner*, or juſtices of peace in their ſeſſions, by force of this act ſhall be adjudged by the ſame juſtices before whom ſuch perſon ſhall be convicted, to have one of his ears cut off. (2) And if the perſon or perſons ſo offending have none ears, whereby they ſhould receive ſuch puniſhment as is before declared, that then he or they to be marked and burned in the cheek with an hot iron, having the letter *F.* whereby he or they may be known and taken for fray-makers and fighters; (3) and

beſides that, every ſuch perſon to be and ſtand *ipſo facto* excommuicated, as is aforeſaid."

In the expoſition of this act, ſays Mr. Serjeant *Hawkins*, it hath been holden: Firſt, that notwithſtanding the words of the ſtatute be expreſſed, that he who ſmites another in the church-yard, *&c.* ſhall, *ipſo facto*, be deemed excommunicate; yet there ought either to be a precedent conviction at law, which muſt be tranſmitted to the ordinary, or elſe the excommunication muſt be declared in the ſpiritual court upon a proper proof of the offence there; for it is implied in every penal law, that no one ſhall incur the penalty thereof, till he be found guilty upon a lawful trial; alſo it muſt be intended, in the conſtruction of this ſtatute, that the excommunication ought to appear judicially, for otherwiſe, there could be no abſolution. 1 *Haw. P. C.* 139.

Secondly, that he who ſtrikes another in a church, *&c.* can no way excuſe himſelf, by ſhewing that the other aſſaulted him. 1 *Hawk. P. C.* 139.

Thirdly, that Churchwardens, or perhaps private perſons, who whip boys for playing in the church, or pull off the hats of thoſe who obſtinately refuſe to take them off themſelves, or gently lay their hands on thoſe who diſturb the performance of any part of divine ſervice, and turn them out of the church, are not within the meaning of the ſtatute. 1 *Hawk.* 139.

Prohibition to the ſpiritual ſtay proceedings on 5 & 6 Ed. 6. c. 4. ſ. 2. which act contains three diſtinct clauſes levelled againſt three diſtinct offences in churches and church-yards, viz. 1ſt, quarrelling, chiding, or brawling by words only; 2dly, ſmiting or laying violent hands; 3dly, ſtriking with a weapon, or drawing one with intent to ſtrike; for which ſecond offence, the offender is *ipſo facto* to be deemed excommunicate. 1ſt, The excleſiaſtical court may proceed upon the two *firſt* clauſes, and are not to be prohibited; but upon the *third* clauſe there muſt be a *previous conviction*, and a tranſmiſſion of the ſentence, and a declaration; but if they proceed for *damages*, on either clauſe they ſhall be prohibited. 1 Bur. Rep. 240. Hil. 30 Geo 2. Wilſon, clerk, v. Greaves.

Mr. Serjeant *Hewitt* ſhewed cauſe againſt a prohibition, which Mr. Serjeant *Pool* had moved for, (on the 6th of *July* laſt) to be directed to the archdeacon of *Nottinghom*, to ſtay his proceedings in a ſuit againſt Mr. *Wilſon*, parſon of *Newark*, for *brawling* in the church, and alſo for *ſmiting* in the church: But he prayed the prohibition, only as to the latter charge, the *ſmiting* in the church. *V.* 5, 6 *E.* 6. *c.* 4. *ſ.* 2. Which act contains three diſtinct clauſes, levelled againſt three diſtinct offences committed in churches and churchyards; *viz.* the 1ſt againſt quarrelling, chiding, or brawling by words only; the 2d againſt ſmiting, or laying violent hands; the 3d againſt ſtriking with a weapon, or drawing one with intent to ſtrike. His objection was, That as to *this* offence of *ſmiting* in the church, there ought to have been a *previous* CONVICTION *at* LAW; though the ſtatute ſays, "That he ſhall *ipſo facto* be deemed excommunicate." In proof of which he cited *Cro. Eliz.* 224. *pl.* 6. *Dethick*'s caſe. Where he was *indicted*, upon this ſtatute of 5, 6 *E.* 6. for ſtriking in St. *Paul*'s church-yard: Though he got off indeed for want of being named *Garter*. 1 *Vent.* 146. The caſe of *Dyer* v. *Eaſt*, is full in point, "That the ſtriker in a church-yard does not ſtand *ipſo facto* excommunicated, UNTIL he be thereof convicted at law, and this tranſmitted to the ordinary."

And here having been *no previous conviction* at law, he prayed a prohibition *quoad the ſmiting:* And obtained a rule to ſhew cauſe.

Againſt which rule, Mr. Serjeant *Hewitt* (on *Monday* 7th of *February* 1757) ſhewed cauſe, as follows: In 5 & 6 *E.* 6. *c.* 4. there are three ſections, and three different offences: And this offence charged in the libel is not an offence conſtituted ſo by this act; but was a matter within the juriſdiction of the ſpiritual court, before that act, and *abſtractedly* from it. They have, without diſpute, juriſdiction as to the *brawling*. And as to the ſecond branch, for *ſmiting in the church*, there needs not be a previous conviction at *common* law: It is enough, if the excommunication be in the *ſpiritual* court. To prove which, he cited *Hetley* 86. The caſe of *Viner* v. *Eaton*, *Cro. Jac.* 462. The caſe of *Large* v. *Alton*, *pl.* 7. *Cro. Eliz.* 680. The caſe of *Baker* v. *Brent* and *Robinſon*. 1 *Hawk. P. C. ſo.* 139. *c.* 63. *ſect.* 27. 2 Lord *Raym.* 850. The caſe of *Wenmouth* v. *Collins*. The court denied a prohibition; becauſe this offence was originally, and before this ſtatute, conuſable in the eccleſiaſtical court, *ratione loci*; and that the ſtatute, though it provides a penalty, does not alter the juriſdiction. Therefore he concluded, that notwithſtanding *this* objection, the ſpiritual court *have* juriſdiction. It was then adjourned to the next day; when it proceeded, and was determined. Mr. Juſtice *Foſter* and Mr. Juſtice *Wilmot* were both abſent. Mr. Serjeant *Pool*—I cited 1 *Ventr.* 146. *Dyer* v. *Eaſt*, as a caſe in point, That there *muſt be* a previous conviction by a trial *at law*; And that ſuch conviction muſt be *tranſmitted* to the ſpiritual court. *Cro. Eliz.* 224. *Dethick's* caſe: Where there was an indictment actually found and pleaded to. As to my brother *Hewitt*'s caſes—*Hetley* 86, *Viner* againſt *Eaton*, is a looſe incomplete note; and gives no reaſon why the prohibition was denied. *Cro. Jac.* 462. *Large* v. *Alton* proves nothing at all to the preſent purpoſe: And it was for *brawling* only; In *which* caſe, I agree that no prohibition ſhall go. *Cro. Eliz.* 680. is indeed in the alternative, "After ſentence, *or* due trial and conviction, and not before:" But that is only ſaid by *Dodderidge*, then at the bar, in arguing for the defendant. *Wenmouth* v. *Collins might* be for a prohibition *generally*. Indeed a reaſon is given for denying the prohibition, *viz.* That the ſpiritual court originally had juriſdiction to hold plea for this matter before the act. But I deny that they had ſuch *original* juriſdiction: And the act *gives them none*. This is a force *vi et armis*; an aſſault and beating: And the temporal courts will prohibit them from proceeding, upon it. *Bro. Prohibition*, *pl.* 14. and *Bro. Conſultation*, 6. are expreſs, That where a man ſues in the ſpiritual court; and an action at common law lies for the ſame matter; a prohibition lies, and no conſultation ſhall be granted. [Theſe are both the ſame caſes; *viz.* 22 *E.* 4. 20.] Mr. *Taylor White* ſpoke on the ſame ſide for Mr. *Wilſon*. He even attempted to ſhew, that a prohibition would be reaſonable as to the *brawling*: For that the fact ſtated could not come within the notion of *brawling*; as it was only ſpeaking to a third perſon, to turn *Greaves* out of the church. As to the *ſtriking*—The ſpiritual court had no juriſdiction *before* the ſtatute; and the ſtatute gives them none: They have only power to *pronounce the ſentence* of excommunication; but *not* the power of *judging*. As to the caſe of *Wenmouth* v. *Collins*, It is but a looſe note; and *Holt* was abſent;

and there might have been a confeſſion. And there have been many indictments, he ſaid, on this ſtatute: And *this* method of conviction was the *ancient* method.

Lord *Mansfield*: The ſtatute of 5, 6 *Ed.* 6. *c.* 4. has three degrees of offences, and three different puniſhments. And whatever juriſdiction the ſpiritual court might claim *before* the act, they are *now* proceeding *ſince* the act. Therefore it is not very material how the matter ſtood *before* the act. The puniſhment is given, by this act, to the eccleſiaſtical court: And the puniſhment is ſuch as can only be executed by *the ordinary*. The caſe ſtated with regard to the firſt offence, is ſufficiently a *brawling*, within the meaning of the act. The ſecond offence is SMITING *in the church*, or *church-yard*. Now this is indeed *ſtill* an offence at *common* law; And he *may* be indicted for it: But, beſides this, he may, by this act, be *ipſo facto* excommunicated. By whom? By the ordinary. Indeed the ordinary *may* uſe a conviction at law, as a *proof* of the fact. And the caſe in *Raym.* [2 Lord *Raymond* 850. *Wennouth* v. *Collins*,] is a plain proof that the eccleſiaſtical court may proceed upon the two firſt clauſes, and are not to be prohibited. But then there is a third offence, and a third puniſhment mentioned in the act of 5, 6 *E.* 6. *c.* 4. which has made all the confuſion: This offence is maliciouſly ſtriking with any weapon, in any church or church-yard, or drawing any weapon there, with intent to ſtrike. For this third offence, the act inflicts a double puniſhment, one temporal; the other, ſpiritual: The temporal puniſhment is loſs of an ear or marking in the cheek, *after conviction*; the ſpiritual is, And *beſides* every ſuch perſon to be and ſtand *ipſo facto* excommunicated as is aforeſaid. Here, indeed, there muſt be a *previous* conviction; and a tranſmiſſion of the ſentence; and a declaration. But on the ſecond clauſe, no previous conviction is neceſſary: (though, if there is one, it may be uſed AS *a proof* of the fact.) This libel is upon the firſt and *ſecond* clauſes: NOT upon the *third*. And the proceedings of the two courts being *diverſo intuitu*, it is no objection to ſay, That a man will at this rate be *twice puniſhed* for the *ſame* offence. And this is *common*, in many caſes: For *We* proceed, to *puniſh*, *They to amend*. 'Tis clear that upon the TWO FIRST *clauſes*, the eccleſiaſtical court HAS a juriſdiction. And the caſes upon words do not apply to the preſent caſe. Mr. Juſtice *Deniſon* concurred: Their proceedings are *pro ſalute animæ*. Indeed if they proceed for *damages*, this court will prohibit them. And that was laid down by the court in the caſe of *Large* v. *Alton*, in *Cro. Jac.* 462. where the coſts being given only *pro expenſis litis*, the court would not prohibit them: But they declared that they would have done otherwiſe, if it had been *pro damnis*. And it is plain to me, that the caſe in 1 *Ventr.* 146. *Dyer* v. *Eaſt*, was really a determination upon the *third* clauſe of the act; and is a miſtake: I ſuppoſe the words *with a weapon*, are *left out by miſtake*. The reporter was then a young man. But however, this is the *only* caſe to be met with, to this purpoſe; and it muſt be a miſtake, either in the ſtate of the caſe, or in the opinion: For on the *ſecond* clauſe, ſurely, we can not prohibit them; becauſe they are exactly within the *words* of the ſtatute, That if a perſon or perſons ſhall *ſmite* or lay any violent hands upon

on any other, either in any church or church-yards, they ſhall *ipſo facto* be deemed excommunicate. *Per Cur.* viz. the only two judges now preſent, the *rule* was *diſcharged.*

Stat. 17 *Car.* 2. *c.* 3. [*A. D.* 1665. *Intituled*] "An act for uniting churches in cities and towns corporate."

Farther provided for by 4 & 5 W. & M. c. 12.

"Foraſmuch as the ſettled proviſion for miniſters, in moſt cities and towns corporate within this realm, is not ſufficient for the maintenance of able miniſters fit for ſuch places, whereby mean and ſtipendiary preachers are entertained, to ſerve the cures there; who wholly depending for their maintenance upon the good-will and liking of their auditors, have been, and are hereby under temptation of too much complying, and ſuiting their doctrine and teaching to the humour rather than good of their auditors, which hath been a great occaſion of faction and ſchiſm, and of the contempt of the miniſtry: (2) The lords and commons in parliament aſſembled, being deeply ſenſible of the ill conſequence thereof, and piouſly deſiring able miniſters in ſuch places, and a competent ſettled maintenance for them by the union of churches; which is alſo become neceſſary, by reaſon of the great ruin of many churches and pariſhes in the late ill times, and otherwiſe; do therefore moſt humbly beſeech your moſt excellent majeſty, That it may be enacted; (3) and Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That in every city or town corporate and their liberties, within the kingdom of *England*, and dominion of *Wales*, which have a mayor and aldermen, and particular juſtices of the peace by charter or commiſſion, or bailiff or bailiffs, or other chief officer or officers, and other aſſiſtants by like charter; and where two or more churches or chapels, or a church and a chapel, and the pariſhes thereunto belonging, do lie within the ſaid corporation, or liberties thereof, convenient to be united: In ſuch caſes the biſhop of the dioceſe where ſuch pariſh and pariſhes are, with the conſent of the mayor, aldermen, and juſtices of the peace, bailiff or bailiffs or other chief officer or officers, or the major part of them, and of the patron and patrons of ſuch church or churches, chapel or chapels, ſhall or may according to due form of law unite the ſaid churches or chapels, or church and chapel, or any of them; (4) and ſhall appoint at which church or chapel, churches or chapels the ſaid pariſhioners and inhabitants of the ſaid pariſhes or places to which the ſaid churches or chapels, or church and chapel do belong, ſhall uſually meet for the worſhip of God, and which of the ſaid churches or chapels, or church or chapel ſhall be united and annexed unto the other, which ſhall be the church preſentative, unto which all preſentations ſhall hereafter be only made, and unto which the pariſhioners ſhall reſort as their proper church; (5) and after ſuch order made, the ſaid churches or chapels, or church and chapel ſhall accordingly for ever ſtand united: And the pariſhioners, landholders, and inhabitants of the ſaid pariſhes and places belonging

In what cities and towns, and how churches and chapels may be united.

Mod. Caſes in Law 5, 6.

belonging to ſuch churches or chapels, or church and chapel ſo united and annexed, ſhall as they, or any of them become void, and from thence-forward, pay all ſuch tithes and other duties as belong, or did belong to the incumbent of any of the ſaid churches or chapels, or church and chapel ſo united and annexed, unto the incumbent of the ſaid preſentative church or chapel, unto which the ſaid other churches or chapels, or church or chapel ſhall be ſo united and annexed."

Pariſhes ſhall remain diſtinct notwithſtanding ſuch union of churches. Carthew 238.

Sect. 2. "And it is hereby alſo enacted, That notwithſtanding any ſuch union to be made by virtue hereof, each of the pariſhes ſo united, ſhall continue diſtinct, as to all rates, taxes, parochial rites, charges and duties, and all other privileges, liberties and reſpects whatſoever, other than what is herein before-mentioned and ſpecified; and church-wardens ſhall be elected and appointed for each pariſh, as they were before ſuch union made."

How and when ſuch uniting ſhall take effect.

Sect. 3. "And be it further enacted and provided, That where one or more of the ſaid churches or chapels, or church and chapel ſo united and annexed, ſhall be full at the time of making ſuch union, that then the ſaid union ſhall take effect for every ſuch church or chapel, upon the firſt avoidance after ſuch union made: (2) And that the ſeveral patrons of the ſaid churches and chapels ſo united, ſhall and may preſent by turns to that church only which ſhall remain and be preſentative from time to time, in ſuch order as the ſaid biſhop, with the conſent of the ſaid mayor, aldermen, and juſtices of peace, bailiff or bailiffs, or other chief officer or officers within ſuch pariſhes, or the major part of them, and of the patron or patrons of ſuch church or churches, chapel or chapels, ſhall determine and decree for the preſervation of their reſpective rights therein, reſpect being therein had to the differences of the values of the yearly maintenance belonging to ſuch churches or chapels, or any of them; (3) ſaving unto the king's majeſty, his heirs and ſucceſſors, all the tenths and firſt-fruits of all ſuch churches and chapels ſo to be united, according to the rates and valuations at which the ſaid churches and chapels are rated and valued in the office of firſt-fruits and tenths, in his majeſty's court of exchequer; and alſo reſerving all procurations and penſions to all perſons to whom they are now, and have been formerly, or ſhall be hereafter due and payable; any thing herein contained notwithſtanding."

And how ſeveral patrons ſhall preſent. Dr. & Stud. 116. b.

How unions muſt be regiſtred.

Sect. 4. "Provided always, That no union of pariſhes or places to be made by virtue of this act ſhall commence or be effectual in law, until it be regiſtred in the regiſter-book of the biſhop of the dioceſe, which the regiſter is hereby required to do."

Pariſhes having 100l. maintenance, may not be united.

Sect. 5. "Provided always, That no union made by virtue hereof ſhall be good and effectual where the ſettled maintenance belonging to the parſons, vicars and incumbents of the church or chapel, or churches or chapels ſo united, ſhall exceed the ſum of one hundred pounds *per annum* clear, and above all charges and repriſes, unleſs the reſpective pariſhioners, or the major part of them, under their hands deſire otherwiſe."

Sect.

Incumbents of such united parishes must be graduates of the university.

Sect. 6. "Provided always, and be it enacted, That every minister settled, as aforesaid, the incumbent of any church or chapel, or churches and chapels united according to this act, shall be the full and lawful incumbent thereof to all intents and purposes, so as such minister be a graduate in one of the universities of this kingdom."

Owners of impropriations may bestow and annex maintenance to the churches where they lie.

Sect. 7. "And be it further enacted by the authority aforesaid, That every owner or proprietor, owners or proprietors of any impropriation, tithes, or portion of tithes, in any parish or chapelry within the kingdom of *England*, or dominion of *Wales*, is, are and shall be, by virtue of this act, inabled and impowered to give or bestow, unite and annex the same, or any part thereof, unto the parsonage or vicarage of the said parish-church or chapel where the same do lie, or arise, or settle the same in trust for the benefit of the said parsonage or vicarage, or of the curate and curates there successively, where the parsonage is impropriate, and no vicar indowed according to his or their respective estates, without any licence of mortmain; any law or statute to the contrary notwithstanding."

Without licence of mortmain.

Parsons and vicars not having settled means of 100 l. per annum, may purchase and annex lands or rents, without licence of mortmain.

Sect. 8. "And be it further enacted, That if the settled maintenance of such parsonage, vicarages, churches and chapels so united, or of any other parsonage or vicarage with cure in the kingdom of *England*, or dominion of *Wales*, shall not amount to the full sum of one hundred pounds *per annum*, clear and above all charges and repriſes, That then it shall be lawful for the parson, vicar, and incumbent of the same, and his successors, to take, receive, and purchase to him and his successors, lands tenements, rents, tithes, or other hereditaments, without any licence of mortman; any law or statute to the contrary notwithstanding."

He who steals goods belonging to a parish church, may be indicted for stealing the goods of the parishioners; and it hath been adjudged, that he who takes off a shroud from a dead corps, may be indicted as having stolen it from him who was the owner thereof when it was put on, for a dead man can have no property. 1 *Hawk. P. C.* 94.

Church-wardens.

CHURCH-WARDENS, (*eccleſiarum guardiani*) are officers yearly choſen, by the conſent of the miniſter and pariſhioners, according to the cuſtom of every ſeveral place, to look to the *church*, *church-yard*, and ſuch things as belong to both, and to obſerve the behaviours of their pariſhioners for ſuch faults as appertain to the juriſdiction or cenſure of the court eccleſiaſtical. Theſe are a kind of corporation, enabled by law to ſue for any thing belonging to their church, or poor of their pariſh. *Cowell.*

Church-wardens are officers inſtituted for the benefit and advantage of religion, whoſe chief duty it is to ſuppreſs all prophaneneſs and immorality, and to ſee that the publick worſhip be performed with due decency and reverence. But though they deal chiefly in matters relating to the church, yet are they every where treated of in our law books, as temporal perſons, and are undoubtedly to be conſidered as a lay corporation veſted with a temporal right in their offices, and a ſpecial property in the goods belonging to the church, which farther appears by the duties injoined them by ſeveral acts of parliament herein after mentioned. 1 *New Abr.* 379.

In the ancient epiſcopal ſynods, the biſhops were wont to ſummon divers credible perſons out of every pariſh, to give information of, and to atteſt the diſorders of clergy and people. Theſe were called *teſtes ſynodales*, and were in after-times a kind of impanelled jury, conſiſting of two, three, or more perſons in every pariſh, who were upon oath to preſent all hereticks and other irregular perſons. *Ken. Par. Ant.* 649. And theſe in proceſs of time became ſtanding officers in ſeveral places, eſpecially in great cities, and from hence were called ſynodſmen, and by corruption *ſideſmen*. They are alſo ſometimes called *queſtmen*, from the nature of their office, in making inquiry concerning offences. And theſe ſideſmen or queſtmen are to be choſen yearly in *Eaſter*-week, by the miniſter and pariſhioners (if they can agree), otherwiſe to be appointed by the ordinary of the dioceſe. But for the moſt part, this whole office is now devolved upon the church-wardens, together with that other office which their name more properly importeth, of taking care of the church and the goods thereof, which they had of very ancient time. *Dr. Burn's Eccleſ. Law*, tit. *Church-wardens.*

Of the right and manner of chooſing church-wardens.

By the common law, the right of chooſing church-wardens belongs to the pariſhioners, who are to be at the charge of repairing the church, *&c.* and therefore it is but fitting that they ſhould have it in their power to determine what perſons are proper to be intruſted in theſe concerns; nor does any canon deprive them of this right; for though by cuſtom the pariſhioners in ſome places chooſe one, and the parſon another, yet this is by

by virtue of the cuſtom, the validity of which, as of all other cuſtoms, muſt be determined in the king's temporal courts; nor can the archdeacon, or any others, who by virtue of their offices are to ſwear and admit them, controul any ſuch election, for herein their offices are purely miniſterial. 1 *New Abr.* 371. cites *Cro. Jac.* 532, 670. *Cro. Car.* 552. *Noy* 31, 139. 2 *Roll Abr.* 234. *Hard.* 379. *Raym.* 439.

And though by cuſtom the rector or vicar may name one, yet where the vicar of St. *Giles*'s in *Northampton* was under a deprivation for not taking the oaths to king *William* and queen *Mary*, and the church being vacant, the pariſhioners proceeded to the election of two church-wardens, and preſented them to be ſworn, but the regiſter of the conſiſtory court being a friend to the vicar, refuſing to ſwear them, unleſs that perſon whom the late vicar approved were nominated one, a *mandamus* was granted. *Carth.* 118.

The pariſhioners are alſo judges of the fitneſs and qualifications of the perſons they chooſe for that office, and therefore where to a *mandamus* to ſwear a church-warden choſen according to the cuſtom, the archdeacon returned, that the perſon preſented was a poor dairyman, who had no eſtate, and was *perſona minus habilis & idonea* for that office; the court granted a peremptory *mandamus*. *Carth.* 393. *Comb.* 417. *S. C.* 1 *Salk.* 166. *S. C.* 5 *Mod.* 325. *S. C.*

But where a prohibition was granted *niſi* to the eccleſiaſtical court, where *J. S.* ſued as church-warden of *&c.* in *Colcheſter*, on a ſuggeſtion, that in *Colcheſter* there is a cuſtom for the inhabitants to elect the church-wardens, and that *A.* and *B.* were duly elected, which matter the defendant had pleaded in the ſpiritual court, but the plea was refuſed; but it appearing that *J. S.* was church-warden *de facto*, choſen by the parſon, and that he all the year acted as ſuch, and that he, with the inhabitants and another church-warden made the tax for which the defendant was ſued in the eccleſiaſtical court, the rule for a prohibition was diſcharged; for *per cur.* Where the queſtion is only, who is church-warden, if ſuch cuſtom is alledged, a prohibition ſhall be granted; but the matter here is for a tax for the repair of the church, and it is not material now, whether he was duly elected or not; it is ſufficient that he was guardian *de facto*; and it may be as well put in iſſue, whether the miniſter was a rightful miniſter; beſides, this tax is not rated by the church-wardens, for they have no ſuch power, but it is a common charge, impoſed by the major part of the pariſhioners, and the church-wardens do no more in aſſeſſing them than the other pariſhioners, and the tax will be well aſſeſſed by the major part of the inhabitants though the church-wardens are againſt it; their chief buſineſs is in collecting of it, and the matter is a matter of eccleſiaſtical cognizance, for the ſpiritual judge may inquire touching the want of reparation of the church. And *note*, that upon the rule for diſcharging the prohibition, all this matter was ordered to be entered, for fear it ſhould be afterwards thought, that a prohibition was decreed where a cuſtom was in queſtion. 3 *Keb.* 533, 542.

In

In an action for a falſe return, a ſpecial verdict found the cuſtom to be for the pariſhioners of annually to elect a church-warden; that *S.* the plaintiff was elected by the pariſhioners to ſerve for church-warden for the year 1734. and until another be choſen; that at a veſtry the enſuing year, he was re-elected by the pariſhioners, but at the veſtry then holden, the vicar and one church-warden adjourned the veſtry to the next day, and the vicar then choſe *Chapman*. A *mandamus* had been directed to to admit and ſwear in the plaintiff. It was argued for the plaintiff, that the eighty-ninth canon of 1603. that all church-wardens and queſtmen ſhall be choſen by the joint choice of the miniſter and pariſh, if it may be, if not, then the miniſter to chooſe one, and the pariſh the other, has never been received as law; and cited *Cro. Jac.* 532. *Warner's* caſe. *Cro. Car.* 551. *Hard.* 378. and *Carth.* 118. where *Holt* chief juſtice ſays, that where the incumbent chooſes one, it is only by uſage; and that a church-warden is a temporal officer. *Per Lee* juſtice. In all councils and elections the general rule is, that the major part binds, and cited 18 *E.* 4. 2. and *Hackwell's Modus tenendi Parliament.*" The chief juſtice ſaid, that the queſtion is, whether the adjourning by vicar jointly with one church-warden was a valid and a good adjournment; and he thought not; and that if vicar and church-wardens had ſuch a power, it muſt be by cuſtom or by rule of common law; but no cuſtom is found, nor is there any rule of common law to veſt this power in the vicar, nor is it in the power of the church-warden to adjourn; and then the right is in the aſſembly itſelf. *Per Probyn* juſtice: The vicar is not a neceſſary party at the veſtry; and judgment for the plaintiff *per tot' cur'*. *Trin.* 1736. in *B. R.* 4 *Vin.* 528.

By *Can.* 89. all church-wardens or queſtmen in every pariſh, ſhall be choſen by the joint conſent of the miniſter and the pariſhioners, if it may be; but if they cannot agree upon ſuch a choice, then the miniſter ſhall chooſe one, and the pariſhioners another: And without ſuch a joint or ſeveral choice, none ſhall take upon them to be church-wardens.

Warner, one of the church-wardens of *Allhallows* in *London*, prayed a prohibition; for that, whereas by the cuſtom of the pariſh, the pariſhioners every year uſed to elect one of the pariſh, who had born the office of ſcavenger, ſideſman, or conſtable, to be church-warden; and that every year one who had been ſo elected church-warden, was to continue a year longer, and to be the upper church-warden, and another was to be choſen to him, who is called the under church-warden; that ſuch a choice being made in that pariſh of the ſaid *Warner* to be church-warden, the parſon notwithſtanding that election nominated one *Carter* to be church-warden, and procured him to be ſworn in the eccleſiaſtical court, to be church-warden, and denied the ſaid *Warner* to be church-warden according to the election of the pariſhioners; and this by colour of the late canon, that the parſon ſhould have the election of one of the church-wardens; and this being againſt the cuſtom, a prohibition was prayed, and a precedent ſhewn in the common bench, *E.* 5 *Ja.* for the pariſhioners of *Walbrook* in *London*, where ſuch a prohibition was granted; for it being a ſpecial cuſtom,

the canons cannot alter it, eſpecially in *London*, where the parſon and church-warden are a corporation, to purchaſe and demiſe their lands; if every parſon might have election of one church-warden, without the aſſent of the pariſhioners, they might be much prejudiced thereby. *Cro. Car.* 532. *Eaſt.* 17 *Jac.* 1. *Warner*'s caſe.

But although the greateſt part of the pariſhes in *London* chooſe the church-wardens by cuſtom; yet in all the new erected pariſhes the canon ſhall take place (unleſs the act of parliament, in virtue of which any church was erected, ſhall have ſpecially provided that the pariſhioners ſhall chooſe both;) in ſo much as no cuſtom can be pleaded in ſuch new pariſhes. *Gibſ.* 215.

Where cuſtom in chooſing church-wardens cannot take place, they muſt reſort to the canon. 1 Stran. 145 Hil 5 Geo. 1. Catten v. Berwick. At a court of delegates in Serjeants Inn Flee-ſtreet, 27 Feb. 1718.

The cuſtom was, for the parſon to appoint one, and the two old church-wardens the other. But it went no further. In this caſe the church-wardens could not agree, ſo the one preſents *Barwick*, and the pariſhioners at large chooſe *Catten*. It was inſiſted for *Barwick*, that his caſe was like that of coparceners, where, if they diſagree, the ordinary may admit the preſentee of which he will, except the eldeſt alone preſents. On the other ſide it was ſaid, that the caſes widely differed; for in the caſe of a preſentation, the ordinary hath a power to refuſe, but he hath not ſo in the caſe of church-wardens, for they are a corporation at common law, and more temporal than ſpiritual officers: And a caſe was cited to have been adjudged in the King's Bench, where to a *mandamus* to ſwear in a church-warden, the ordinary returned that he was a very unfit perſon; but a peremptory *mandamus* was granted, becauſe the ordinary was not a judge in that caſe. And the court held, that by this diſagreement the cuſtom was laid out of the caſe; and then they muſt reſort to the canon: Under which, *Catten* being duly elected, they decreed for him, with 60*l.* coſts.

In ſome caſes the lord of a manor preſcribeth for the appointment of church-wardens: And this ſhall not be tried in the eccleſiaſtical court, although it be a preſcription of what appertains to a ſpiritual thing. *God.* 153.

Ordinary has no juridiction to chooſe church-wardens, though the pariſhioners and parſon ſhould neglect it. 1 Stran. 52. Eaſt. 3 Geo. 1. Stutter v. Freſton.

Prohibition was granted in the ſpiritual court, where it was libelled againſt the defendant, for not appearing to take upon him the office of church-warden, though thereunto *appointed by the ordinary*. And it was held, that although the pariſhioners and parſon neglect for ever ſo long to chooſe church-wardens, yet the ordinary hath no juriſdiction; for church-wardens were a corporation at common law, and they are different from the queſtmen who were the creatures of the reformation, and came in by the canon law. The canons ſay, that church-wardens ſhall be choſen by the parſon and pariſhioners; and if they diſagree, then one by the parſon, and the other by the pariſhioners; and otherwiſe they ſhall not be. By the court, The proper way is, to take a *mandamus* out of the King's Bench.

Who are exempted from being church-wardens.

All *peers* of the realm, by reaſon of their dignity, are exempt from the office of church-wardens. *Gibſ.* 215. So are all *clergymen*, by reaſon of their order. *Id.* In like manner all *parliament men*, by reaſon of their privilege. *Id.*

If an *attorney* of the King's Bench be made a church-warden of a pariſh, he ſhall have a writ of privilege out of the King's Bench, ſhewing his privilege to be diſcharged thereof, by reaſon of his attendance in the ſaid court. *Felix Wilſon* being an attorney of the King's Bench, was made church-warden of *Hanwell*, and he refuſed, and was ſued in the ſpiritual court to take upon him the office, and a prohibition was granted. So in like manner, Mr. *Baker* being choſen church-warden of *Alderman-bury*, in *London*, ſuch writ was granted. 2 *Roll. Abr.* 272. *Eaſt.* 14 *Car.* 1. and *Trin.* 15 *Car.* 1.

Stampe, clerk of the King's Bench, was choſen church-warden of *Kingſton*, and had a writ of privilege to the ſpiritual court, requiring them not to compel him to take the oath; which writ being diſobeyed, he had a prohibition. 1 *Rol. Abr.* 368.

By *ſtat.* 6 *Will.* 3. *c.* 4. Apothecaries who have ſerved ſeven years, ſhall be exempted from the office of church-warden. And by the *ſtat.* 18 *Geo.* 2. *c.* 15. Freemen of the corporation of ſurgeons in *London* are exempted from being church-wardens.

By *ſtat.* 1 *Will. ſeſſ.* 1. *c.* 18. diſſenting teachers or preachers, in holy orders, or pretended holy orders, being duly qualified, are exempted from the office of church-wardens: And by the ſame act other diſſenters, ſcrupling to take upon them the office, may execute the ſame by a ſufficient deputy, to be approved of in like manner as other church-wardens.

By *ſtat.* 10 & 11 *Will.* 3. *c.* 23. *ſect.* 2. All perſons who have proſecuted a felon to conviction, are exempted from the office of church-warden, in the pariſh where the offence was committed.

Of their intereſt in, and power over the things belonging to the church.

The church-wardens, when choſen, are a corporation intruſted with the care and management of the goods belonging to the church, which they are to order for the beſt advantage of the pariſhioners; they are likewiſe enabled to take goods for the benefit of the church, but cannot diſpoſe of them without the pariſhioners. 1 *Rol. Abr.* 393. 2 *Inſt.* 492. 1 *Rol. Rep.* 67. *Yelv.* 173.

They have ſuch a ſpecial property in the organ, bells, pariſh-books, bible, chalice, ſurplice, *&c.* belonging to the church, that for the taking away, or for any damage done any of them, they may bring an action at law, and therefore the parſon cannot ſue for them in the ſpiritual court. 1 *New Abr.* 372.

If two church-wardens ſue in the ſpiritual court for a levy towards the reparation of their church, and have ſentence to recover, and coſts aſſeſſed, and after one of them releaſes, yet the other may proceed for the coſts, *&c.* for church-wardens have nothing but to the uſe of the pariſh, and the corporation conſiſts of both; and one only cannot releaſe or give away the goods of the church. *Cro. Jac.* 235. *Yelv.* 173. 2 *Brownl.* 215. *S. C.*

Alſo they have ſuch a ſpecial property in the goods of the church, that when they are ſtolen, they may bring an appeal of robbery for them: They may alſo ſue the offenders in the ſpiritual court, *pro ſalute animæ*, but not to recover damages. 2 *Hawk. P. C.* 167.

But the church-wardens have no right to, or intereſt in the freehold and inheritance of the church, which alone belongs to the parſon or incumbent. *Comp. Incumb.* 381.

Alſo the ſeats in the church being fixed in the freehold, the church-wardens cannot diſpoſe of them alone, nor can the church-wardens and rectors jointly diſpoſe of them without the conſent of the ordinary; and though ſuch diſpoſitions have been made, yet it has been always preſumed that it was ſo done with the conſent and approbation of the ordinary. See 12 *Co.* 105. *Hetl.* 94. *Godb.* 200. 2 *Bulſt.* 150. *Hob.* 69. *Moor* 878. *Comp. Incumb.* 1 *Salk.* 167.

But as ſeats are erected for the more convenient attending of divine ſervice, and as the pariſhioners are at the expence of erecting them, and keeping them in repair, if any of them be taken away, though they are fixed to the freehold, yet the church-wardens, and not the parſon, ſhall bring the action againſt the wrong-doer. *Comp. Incumb.* 382.

It is ſaid to have been holden, that at common law a church-warden may maintain an action upon the caſe for defacing a monument in the church. *Gold.* 279.

Of their power and duty in making rates and preſentments, and hindering irreverence in the church, and their power in ſeveral other matters.

The church-wardens have no power to make any rate themſelves, excluſive of the pariſhioners, their duty being only to ſummon the pariſhioners, who are to meet for that purpoſe, and when they are aſſembled, a rate made by the majority preſent ſhall bind the whole pariſh, although the church-wardens voted againſt it. See *Comp. Incumb.* 389.

But if the church-wardens give the pariſhioners due notice, that they intend to meet for that purpoſe, and the pariſhioners refuſe to come, or being aſſembled refuſe to make any rate, they may make one without their concurrence; for as they are liable to be puniſhed in the eccleſiaſtical courts for not repairing the church, it would be unreaſonable that they ſhould ſuffer by the wilfulneſs and obſtinacy of others. 1 *Vent.* 367. 1 *Mod.* 79, 194.

The church-wardens in ſummoning the pariſhioners need not to do it from houſe to houſe, but a general public ſummons at the church is ſufficient, and the major part of them that appear upon ſuch ſummons, will bind the whole pariſh. 1 *Vent.* 367. *Comp. Incumb.* 389.

On a motion for a prohibition, it appeared, that the libel recited that the dean of, *&c.* had preſented that the church and chancel of *D.* was out of repair, *&c.* and that the church-wardens of the ſaid pariſh did make, or cauſe to be made, a certain rate upon the inhabitants thereof, towards the charge of repairing the ſaid church and chancel; and that the church-wardens had accordingly repaired the church and chancel, and beautified the ſame with ornaments, and that *H.* was a pariſhioner of the ſaid pariſh, and refuſed to pay his proportion of the ſaid rate; and it being objected, *firſt*, That the church-wardens only could not make a rate; *ſecondly*, That the parſon alone ought to repair the chancel; a prohibition was granted generally, though it was ſtrongly inſiſted on that the prohibition ought to go *quoad* the rate for the repairs of the chancel only. *Carth.* 360. 1 *Salk.* 365. *Comb.* 344. 5 *Mod.* 384. *S. C.*

Preſentments made by church-wardens relate to the church, the parſon and

and parishioners in which they are to be guided by the articles delivered them, but these articles must be agreeable to the laws of the church, and particularly to the canons made and agreed on in the year 1603. They need not take a particular oath upon all the presentments they make, but may do it by virtue of their oath of church-wardens. *Cro. Car.* 291. 1 *Vent.* 114. 2 *Vent.* 42.

The oath is to be general, *viz.* to do all things which appertain to their office; and therefore, if the oath tendered requires them to present matters not presentable by law, they are not obliged to take it, nor are they to be required to present or accuse themselves. *Hard.* 364.

Also if the ecclesiastical court proceeds against the church-wardens in matters not within their jurisdiction, an action on the case lies against them. *Hard.* 264.

And if the church-wardens maliciously present an innocent person for any crime, by which he is put to expence, or suffers in his good name or reputation, an action on the case lies. *Cro. Car.* 285. 1 *Sid.* 463. 1 *Vent.* 86.

In assault and battery against a church-warden, he justified that the plaintiff was at church in time of prayers, with his hat on, and that he demanded of him to pull it off, and because he did not do it, the church-warden took off his hat, and laid it by him; and the court held this a good justification, and that church-wardens may justify to wake a man, to switch boys that are at play, and turn an excommunicated person out of the church. 1 *Lev.* 196.

Church-wardens may restrain and hinder any stranger not licensed, from preaching in their church or chapel. *Compl. Incumb.* 335. See 2 *Bulst.* 49.

Every church-warden is also an *overseer of the poor*; by the statute of the 43 *El.* 2.

The church-wardens, or the constables, shall levy the penalty for keeping an unlicensed *alehouse*; by the 3 *C. c.* 3.

They shall receive the penalties, for hawking *spirituous liquors*; by the 9 *Geo.* 2. *c.* 23.

They (or the overseers of the poor) shall levy the penalty for selling *corn* by wrong measure; by the 22 *C.* 2. *c.* 8.

They, and the overseers of the poor, shall distribute amongst the poor, foreign cattle imported, forfeited, and killed; by the 32 *C.* 2. *c.* 2.

They, or the overseers of the poor, shall levy the penalties relating to *weights* and *measures*; by the 16 *C.* 2. *c.* 19. and 22 *C.* 2. *c.* 8.

They shall carry hawkers and pedlars trading without licence, before a justice of the peace; by 9 & 10 *W.* 3. *c.* 27.

They, or the overseers of the poor, shall pay to the high constable the general *county rate*, out of their money collected for the poor; by the 12 *G.* 2. *c.* 29.

They shall receive the penalties for *servants carelessly firing houses*; by the 6 *Ann. c.* 31.

They

They ſhall receive the penalties for *tracking hares in the ſnow*, and other game penalties; by the reſpective game acts.

They ſhall join with the conſtable and ſurveyor of the highways, in chooſing and returning new ſurveyors. *Stat. 3 W. & M. c.* 12. See *Stat. 7 Geo. 3. c.* 42.

Two church-wardens ſue in the ſpiritual court, for a levy towards the reparation of their church, and had a ſentence to recover, and coſts aſſeſſed, the one releaſeth, and the other ſues for the coſts, and there this releaſe was pleaded, and diſallowed. Whereupon he prays a prohibition; and all this matter was diſcloſed in the prohibition, and the defendant thereupon demurred in law. And now it was moved, that this releaſe by the one, being in the perſonalty, ſhould diſcharge the intire. But it was reſolved by all the court to the contrary; for church-wardens have nothing but to the uſe of the pariſh, and therefore the corporation conſiſts in the church-wardens; and the one ſolely cannot releaſe, nor give away the goods of the church, and the coſts are of the ſame nature, which the one without the other cannot diſcharge. And of that opinion was all the court of *King's Bench*, wherefore it was adjudged for the defendant. *Cro. Ja.* 234.

Of their accounts, and of actions brought by and againſt them.

By *Can.* 89. "All church-wardens at the end of their year, or within a month afrer at the moſt, ſhall before the miniſter and the pariſhioners give up a juſt account of ſuch money as they have received, and alſo what particulary they have beſtowed in reparation, and otherwiſe for the uſe of the church. And laſt of all, going out of their office, they ſhall truly deliver up to the pariſhioners whatſoever money, or other things of right belonging to the church or pariſh, which remaineth in their hands, that it may be delivered over by them, to the next church-wardens, by bill indented."

A juſt account] If the cuſtom of the pariſh is, for a certain number of perſons to have the government thereof, and the account is given up to them; the cuſtom is good of law, and the account given to them is a good account. *Gibſ.* 216.

By bill indented] *Lindwood*, ſpeaking of the inventory of the goods of the church, to be delivered in writing to the archdeacon, ſays, it were good that theſe writings ſhould be indented, ſo that one part might remain with the archdeacon, and the other with the pariſhioners; from whence this branch of this preſent canon ſeemeth to have been taken. *Gibſ.* 216.

If money be diſburſed by church-wardens for repairing the church, or any thing elſe merely eccleſiaſtical, the ſpiritual courts ſhall allow their accounts. But if there be any thing elſe that is an agreement between the pariſhioners, the ſucceeding church-wardens may have an action of account at law, and the ſpiritual court in ſuch caſe hath not juriſdiction. 12 *Mod.* 9.

If the church-wardens, by the conſent and agreement of the pariſhioners, take a ruinous bell and deliver it to a bell-founder; and that he by their agreement ſhall have for the caſting thereof 4*l.* and ſhall retain it till the 4*l.* be paid; this agreement of the pariſhioners ſhall excuſe the church-wardens,

wardens, in a writ of account brought againſt them by their ſucceſſors. 1 *Rol. Abr.* 121. *pl.* 9.

If the church-wardens and pariſhioners make an aſſeſſment, and the church-wardens lay out the whole money; but before the whole is collected their time is expired; and new church-wardens are choſen, the former church-wardens, by having preſented ſuch pariſhioners as refuſed to pay before the determination of their time, may ſtill proceed againſt them; otherwiſe the new church-wardens muſt collect ſuch arrears, and reimburſe their predeceſſors. See *Prec. in Chan.* 42. 2 *Ven.* 262.

If goods belonging to the church are taken away, and the church-wardens for the time being neglect to bring an action, the ſucceeding church-wardens may, by virtue of their office, bring an action againſt the wrong-doer, but they muſt declare *ad damnum parochianorum*, and not *ipſorum*, though the old church-wardens, in whoſe time the fact was done, may lay it either way. *Cro. Eliz.* 145, 179. 1 *Leon.* 177.

If *A.* was church-warden of *B.* and at the end of the year gave up his accounts to his ſucceſſor, and yet *A.* is falſly and maliciouſly cited by *D.* into the eccleſiaſtical court, to render an account, and at the requeſt of *D.* he is excommunicated for not rendering up his account; an action lies againſt *D.*

If a church-warden in any caſe is maliciouſly ſued in the ſpiritual court for not making up his account, and is excommunicated, when in fact it hath been duly made; he may have a prohibition: And alſo an action upon the caſe will lie. *Gibſ.* 216. *Bunb.* 247.

Where church-wardens have paſſed their accounts at a veſtry, the ſpiritual court ſhall not afterwards proceed againſt them to account upon oath. *Bunb.* 289.

The church-wardens were cited into the court of *Litchfield* to account. They pleaded, that they had accounted at the veſtry, according to law; which was rejected; and a prohibition was granted. For the ordinary is not to take the account; he can only give a judgment that they do account; and to what purpoſe ſhould they be ſent back to thoſe, who have taken their account already? *Str.* 974.

The ſpiritual court hath no juriſdiction to ſettle the church-wardens accounts. And a prohibition was granted, after ſentence allowing the accounts, and an appeal to the arches. *Str.* 1133.

And if the church-wardens have laid out the pariſh money imprudently and improvidently; yet if it be truly and honeſtly laid out, they muſt be reimburſed again; and the pariſhioners can have no remedy herein, unleſs ſome fraud or deceit be proved againſt them; becauſe the pariſh have made them their truſtees. But if they be going on in an expenſive way, the pariſhioners may complain to the ordinary, in order to give a check to them, or to procure (Dr. *Gibſon* ſays) a removal of them from their office. *Gibſ.* 196.

Adjudged, that the church-wardens *Prudence* and *Bond* could not cite the defendant *Dent* into the ſpiritual court, for non-payment of his church-rate,

rate, after their year was expired; for they can only ſue in their politick capacity, and cannot inſtitute any ſuit after that capacity is gone. It was agreed, that if the ſuit had been begun within their year, they might have proceeded in it after their year was out, this being of neceſſity to prevent people from delays in order to wear out the year; but in regard this ſuit was not commenced till the year was out, and no precedents were ſhewn to warrant this ſuit, the defendant *Dent* was diſmiſſed. *Str.* 852.

If the church-wardens for the time being, neglect to bring an action for any of the goods of the church taken away; their ſucceſſors may bring treſpaſs for them, in reſpect of their office: but then the new church-wardens muſt ſay, to the damage *of the pariſhioners*, and not *of themſelves*; tho' the old church-wardens, in whoſe time the goods were taken away, might ſay either. *Watſ. c.* 39.

And if any of the goods of the church are detained, or not delivered by the predeceſſor; the ſucceſſor hath an action againſt him alſo. *Gibſ.* 216.

On a bill in chancery againſt ninety pariſhioners, by the executrix of one of the church-wardens of *Woodford*, to be reimburſed money laid out by the teſtator as church-warden, for rebuilding the ſteeple of the church; it was objected, that this matter was proper for the eccleſiaſtical court, and not for this court. But by *Harcourt* chancellor, The plaintiff is proper for relief in this court, and there are many precedents of the like nature. And it was decreed, that the pariſhioners ſhould reimburſe the plaintiff the money laid out by her teſtator, with coſts of this ſuit, and that the money ſhould be raiſed by a pariſh rate. 4 *Vin.* tit. *Church-wardens.*

The church-wardens, as being a corporation for the goods of the pariſh, commenced a ſuit, with the conſent and by order of the pariſh, concerning a charity for the poor: in which ſuit they miſcarried. And then they brought a bill againſt the ſubſequent church-wardens, to be repaid the coſts by them expended; and had a decree for it. It was proved, that from time to time the pariſh was made acquainted with what they did; and tho' there was no veſtry by ſubſcription, yet a veſtry-book, kept for the pariſh acts was allowed as evidence of their conſent. They are the truſtees of the pariſh; and the pariſhioners ought to contribute, and not lay the burden upon thoſe poor people the church-wardens. And the annual ſucceſſive church-wardens need not to be made parties, as they are renewed. By the maſter of the Rolls. 4 *Vin.* tit. *Church-wardens. C.*

By *ſtat.* 11 *Geo.* 2. *c* 26. Church-wardens, *&c.* are required to carry hawkers of brandy, *&c.* before juſtices of peace.

By the *ſtat.* 3 *&* 4 *W. & M. c.* 11. In all actions to be brought in the courts of *Weſtminſter*, or at the aſſiſes, for money miſpent by church-wardens, the evidence of the pariſhioners, other than ſuch as receive alms, ſhall be taken and admitted.

Church-wardens are comprehended within the purview of the ſtatutes 7 *Jac.* 1. *cap.* 5. and 21 *Jac.* 1. *cap.* 12. as to pleading the general iſſue

to

to actions brought againſt them, and as to double coſts when they have judgment.

But in action on the caſe againſt a church-warden for a falſe and malicious preſentment, though there be judgment for him, yet he ſhall not have double coſts; for the ſtatute does not extend to ſpiritual affairs. *Cro. Car.* 285, 286.

Clergy.

CLERGY, (*Clerus*) is diverſly taken; ſometimes for the whole number of thoſe who are *de clero domini*; of our lord's lot or ſhare, as the tribe of *Levi* was in *Judæa*, ſometimes for a plea to an indictment or an appeal, and is by *Staunford* (*Pl. Cor. lib.* 2. *c.* 41.) thus defined:—Clergy is an ancient liberty of the church, which hath been confirmed by divers parliaments, and is when a prieſt, or one in orders, is arraigned of felony before a ſecular judge, he may pray his *clergy*; which is as much as if he prayed to be delivered to his ordinary, to purge himſelf of the offence objected. And this might be done in caſe of murder. *Co. Lib.* 4. *fo.* 46. *a.*

Original and alteration of the privilege of clergy.

Anciently, ſays lord *Hale*, princes and ſtates converted to chriſtianity, in favour of the clergy, and for their encouragement in their offices and employments, and that they might not be ſo much intangled in ſuits, did grant to the clergy very bountiful privileges and exemptions, principally of two kinds. 1. Exemption of places conſecrated to religious duties from arreſts for crimes, which was the original of ſanctuaries. 2. Exemption of their perſons from criminal proceedings in ſome caſe capital before ſecular judges, which was the true original of the *privilegium clericale*. 2 Hale's Hiſt. P. C. 323.

The clergy increaſing in wealth, power, honour, number, and intereſt, afterwards ſet up for themſelves, and that which they obtained by the favour of princes and ſtates at firſt, they now began to claim as their right, and a right of the higheſt nature, namely *jure divino*; and by their canons and conſtitutions endeavoured, and (where they met with tame and eaſy princes and ſtates,) obtained vaſt extenſions of theſe exemptions. 1. In the perſons concerned, namely to all that had any kind of ſubordinate miniſtration relative to the church. 2. In the cauſes, exempting as far they could all cauſes of clergymen, as well civil as criminal, from the juriſdiction of the ſecular power, and wholly ſubordinating them immediately and only to the eccleſiaſtical juriſdiction, which they ſuppoſed to be lodged firſt in the pope by divine right and inveſtiture from *Chriſt*, and from the pope ſhed abroad into all ſubordinate and eccleſiaſtical juriſdictions, whether ordinary or delegate. 2 *Hale's Hiſt.* 324.

And by this means they endeavoured, and in ſome kingdoms and for ſome ages obtained, that there was a double ſupreme power, or two

kingdoms in every kingdom, the one a *regnum eccleſiaſticum*, abſolute and independent upon any but the pope over eccleſiaſtical men and cauſes, exempt and ſeparate from the ſecular magiſtrate; the other a *regnum ſeculare* of the king or civil magiſtrate, which yet was not ſo abſolute, but that it had ſubordination and ſubjection to this *regnum eccleſiaſticum*; ſo it was *regnum ſub graviori regno*. He who is curious to ſee the whole ſcheme of their claim, let him read *Suarez* his large diſcourſe of the *monumenta eccleſiaſtica* in his *Opuſcula*. 2 *Hale's Hiſt.* 324.

But although the uſurpations of the pope were very great, and obtained much in this kingdom, until the extermination of his pretended ſupremacy by king *Henry* 8. yet this claim of the exemption of the clergy totally from ſecular juriſdiction grew ſo burdenſome and intolerable, that it was from time to time qualified and abridged by the civil power, ſometimes by acts of parliament taking it away in ſome caſes, ſometimes by the interpretation and conſtruction of the judges, and ſometimes by the contrary uſage of the kingdom; for eccleſiaſtical canons never bound in *England* farther than they were received, and ſo had not their authority from their own ſtrength and obligation, but from the uſages and cuſtoms of the kingdoms that admitted them, and only ſo far forth as they were ſo admitted. And therefore,

Firſt, As to the exemption of the clergy from civil ſuits between party and party only, if upon the *diſtringas* he was returned *clericus & beneficiatus non habens laicum feodum*, proceſs iſſued to the biſhop to bring him in, and in caſe of a ſtatute merchant they were by ſpecial acts exempted from arreſts by *Capias*. But yet they were not exempted from the juriſdiction of civil courts in civil cauſes, yet anciently they attempted this alſo in the king's courts, but with ill ſucceſs, ſo they never attempted it after, that I remember, ſays *Lord Hale*. 2 *Hale's Hiſt.* 325.

M. 7 & 8 *E.* 1. *B. R. Rot.* 13. *Cant. William Joye plaintiff* brought an action againſt *Guy Mortimer* rector of *Kingſton*, for beating him and cutting of his upper lip with a knife; the defendant pleaded *quòd ipſe eſt clericus, & non debet hic reſpondere*; and that was all the anſwer he would give: *Et quia querela iſta non tangit vitam & membrum, ſed eſt de quâdam tranſgreſſione perſonali, nec ipſe vult in curia domini regis reſpondere ad querelam iſtam.* Judgment was given for the plaintiff to recover 100 *l.* damages taxed by the court, and the defendant was committed to gaol, and afterwards paid twenty marks to the king for a fine. 2 *Hale's Hiſt.* 325.

Secondly, If they were indicted in caſes criminal, but not capital, nor wherein they were to loſe life or limb, there *privilegium clericum* was not allowed them, and therefore not in indictments of treſpaſs, petty larceny, or killing *ſe defendendo*. *Stamf. P. C. fol.* 124. *a.*

Thirdly, If they were indicted of high treaſon, clergy was not allowable, and therefore *Hill.* 2 *H.* 4. *Rot.* 4. *B. R. rex*, where the biſhop of *Carliſle* was indicted of high treaſon, and inſiſted upon his *privilegium clericale, quia epiſcopus unctus*, yet this claim was diſallowed, and he put upon his trial, and convicted.

Yet *Hill.* 17 *E.* 2. *Rot.* 87. in dorſo, *Heref. coram rege*, the biſhop of *Hereford* indicted of high treaſon for levying war againſt the king, alleged,

leged, that he was *epiſcopus* Heref. *ad voluntatem Dei & ſummi pontificis*, and could not anſwer *abſque offenſâ divina & ſanctæ eccleſiæ*. Thereupon the plea was adjourned into parliament, where the biſhop anſwered as before, and the archbiſhop of *Canterbury* claimed him and had him; thereupon it was ordered, that day ſhould be given in the King's Bench to the biſhop; and the archbiſhop was to have him there at the day, and in the mean time a writ iſſued to the ſheriff of *Hereford*, to return twenty-four to inquire, as if he had pleaded, (*quod venire faciat tot & tales, &c. ad inquirendum prout moris eſt, &c. pro quali, &c.*) returnable at the ſame day; the biſhop appeared accordingly in the cuſtody of the archbiſhop, and the jury found him guilty, *Ideo conſiderat' eſt, quod prædictus epiſcopus tanquam convictus, &c. remaneat penes prædictum archiepiſcopum ut prius, &c.* and all his goods and chattles, lands and tenements were ſeized into the king's hands by writ directed to the ſheriff; upon which it is obſervable, 1ſt, That a kind of allowance is made of clergy in high treaſon. 2. That notwithſtanding his claim of clergy, yet a writ iſſued to ſummon a jury, who inquired whether guilty or not. 3. That upon this plea and this inquiſition, though he had his clergy, it was *ut clericus convictus*. 2 *H. H.* 327.

Note; in the parliament of the 1 *E.* 3. this judgment was reverſed for this cauſe, that the juſtice took the inquiſition, *licet idem epiſcopus in aliquam inquiſitionem ſe non poſuiſſet. Clauſ.* 1 *E.* 3. *part.* 1. *M.* 13. So that the judgment was given upon the inquiſition, and not upon *nihil dicit* for ſtanding mute, and therefore erroneous.

But afterwards *T.* 21 *E.* 3. *Rot.* 23. *Hertford, rex, John Gerberge* was indicted for a conſtructive treaſon, namely, accroaching royal power, and thereupon claimed the privilege of clergy, *Et quia privilegum clericale in hujusmodi caſu ſeditionis ſecundum legem & conſuetudinem regni hactenus obtentas & uſitatas non eſt allocandum, &c. quæſitum eſt ab eo ſæpius qualiter ſe velit acquietare*, he ſtill replied, that he was a clerk; and thereupon he is committed to the marſhal *ad pœnitentiam ſuam ſecundum legem & conſuetudinem regni ſubiturum, &c.*

Note; clergy denied in ſuch a treaſon, yet penance awarded, though the charge was treaſon.

Yet at common law before the ſtatute of 25 *E.* 3. *c.* 4. *pro clero*, it ſeems that clergy was allowable to him, that was indicted for counterfeiting coin, or for counterfeiting money. *B. Clergy* 31. But that is altered by the ſtatute of 25 *E.* 3. *pro clero*.

Fourthly, If clerks were indicted with theſe clauſes, *inſidiatores viarum, & depopulatores agrorum*, clergy was denied them, and therefore the act of 4 *H.* 4. *cap.* 2. was made to put theſe clauſes out of indictments, and to allow clergy, if they were in the indictment.

Again, as it was denied in reſpect to ſome offences, ſo this *privilegium clericale* was by the common law abridged in reſpect of the perſon; for certainly by the canon laws Nuns had the exemption from temporal juriſdiction, but the privilege of clergy was never allowed them by our law. *See ſtat.* 21 *Jac. c.* 28. *ſect.* 6 & 7.

Again, tho' the ordinary took himſelf to be the judge of the allowance of the clergy and of the purgation of the clerk, yet the king's courts took that courage to make the ordinary but a miniſter, and themſelves judges

of the allowance and disallowance of the clergy and purgation. 21 *E.* 4. 21. *b.* 9 *E.* 4. 28. *a.*

And so the judges of the common law would oftentimes deliver the clerk to the ordinary, but *absque purgatione*, as where the clerk is attaint by outlawry, or by judgment, or convict by his own confession, or upon an appeal. *Stanf. P. C. lib.* 2. *cap.* 49. 3 *H.* 7. 12. *a.* 10 *E.* 3. *Coron.* 247. *Hob. Rep.* 288. *Searle & Williams*, or if he were a notorious malefactor, *vide* 10 *E.* 3. *Coron.* 247. or if he be convict by verdict of counterfeiting the seal or coin at common law before the statute of 25 *E.* 3. *Lib.* 18 *E.* 1. *Berton*'s case, (*Ryley's plac. parl. p.* 56.) or if he be committed by record to the ordinary *absque purgatione. Hob. ubi supra.*

And in these cases, if the ordinary admitted him to his purgation, he was fineable for it as a great misdemeanor, and the party delivered by such purgation shall be again committed to prison. *M.* 34 & 35 *E.* 1. *Rot.* 59. *Kanc. B. R.* the case of *Hugh Forsham* delivered by *William Testa*, and another commissionated from the pope; and the entry in such cases is, *liberatur ordinario tanquam clericus convictus & utlegatus ad salvo custodiend' periculo, quod incumbit, &c. & inhibitum est eidem ordinario, nè ad aliquam purgationem ipsius A. B. procedat domino rege inconsulto, eò quòd prædictus A. B. pro feloniis, &c. utlegatus est, &c. H.* 14 *E.* 3. *B. R. Rot.* 19. *Rex. Suff. Lond.* The case of *John de Hemmyngeston* chaplain. But indeed, if the clerk had his clergy, and were generally delivered to the ordinary, he might admit him to make his purgation, and upon signification thereof by the ordinary into the chancery, a writ should issue to the sheriff to deliver unto the party so purged all his goods and chattles seized into the king's hands upon that occasion, *nisi fugam fecerit eâ occasione. F. N. B.* 66. *a.* And all this is to shew, that whatsoever weight the clergymen laid upon their canons and their exemptions from the secular jurisdictions, yet their canons or constitutions, or pretensions or claims of this kind were not binding here, nor so taken farther, than either by acts of parliament or the common acceptation of the kingdom they were received, and therefore these previleges received divers alterations and corrections and restrictions by the temporal judges, as the occasion required. 2 *H. Hist.* 329.

In what offences clergy was allowed or not, before and by the Stat. 25 Ed. 3. c. 4.

In case of high treason against the king, clergy was never allowable in this kingdom. 2 *Ha. H. P. C.* 330.

The statute of 25 *Ed.* 3. *for the clergy*, was made in the parliament held in *Hil.* 25 *Ed.* 3. which was in the same parliament, wherein the statute of declaration of treason was made, commonly called the *Statute of purveyance. Id. ib.*

By this statute *pro clero*, *cap.* 4. it is enacted, "That all manner of clerks, as well secular as religious, which shall from henceforth be convict before secular judges, for any treasons or felonies touching other persons than the king himself or his royal majesty, shall from henceforth have and enjoy the privilege of holy church, and shall be without impeachment or delay delivered to the ordinaries demanding them, and upon this the archbishop promiseth, that upon the punishment and safe keeping of such clerks offenders, which shall be delivered to the ordinaries, he shall thereof

thereof make a convenient ordinance, whereby they ſhall be ſafely kept and duly puniſhed, ſo that no clerk ſhall take courage to offend for default of correction."

At the ſame parliament it was declared what was treaſon, and amongſt the reſt, Counterfeiting the great or privy ſeal, or the king's coin, is declared treaſon, and put in the ſame rank with compaſſing the king's death, or levying of war, and it is thereby enacted, that no other offences, than what are therein declared, be treaſon, till declared by parliament. 2 *H. H. P. C.* 331.

Before this ſtatute, there were two ſorts of treaſons, that concerned the king, one was of great note, and another of leſs note.

Thoſe of the greater note were *conſpiring the king's death*, *levying of war againſt the king*, *adhering to his enemies*, and two others, that are ſince abrogated by the ſtatute of 25 *Ed.* 3. which came under the general and obſcure names of *ſedition*, and *accroaching of royal power*. 2 *H. H. P. C.* 331.

In any of theſe a party convict had not his clergy at common law. This appears by the judgment, *T.* 21 *Ed.* 3. *B. R. Rot.* 23 *Rex. Ib. id.*

But there were other treaſons, that concerned the king which were of an inferior note, namely *counterfeiting the ſeal* and *counterfeitiug the coin*; theſe, the latter eſpecially, had only judgment as in caſe of petit treaſon, namely, to be drawn and hanged. *Ib. id.*

And it ſeems before the ſtatute of 25 *Ed.* 3. of *treaſons*, clergy was allowed in both theſe caſes, as appears by the old book of *E.* 3. *B. R.* tit. *Clergy*, *placito ultimo*, and the judgment in parliament of 18 *Ed.* 1. in *Borton*'s caſe, who being convict for counterfeiting the king's ſeal, had his clergy, but *tradatur ordinario ſine purgatione. Id. ib.*

But now, as to the ſtatute of 25 *Ed.* 3. *pro Clero*, and the ſtatute of 25 *Ed.* 3. at the ſame parliament *de proditionibus*, laying them both together in all caſes of treaſon touching the king himſelf or his royal majeſty, clergy is wholly taken away, and in all other caſes of treaſon or felony, clergy is allowed; and conſequently in murder, robbery, petit treaſon, clergy is reſtored and ſettled by this act of parliament. 2 *H. H. P. C.* 332.

But whatſoever is declared treaſon againſt the king by the ſtatute of 25 *Ed.* 3. *de proditionibus*, as well conterfeiting the ſeal or the money of the kingdom, as any other treaſon therein declared, is wholly exempted from clergy. 2 *H. H. P. C.* 332. cites 19 *H.* 6. 47. *b. Staunf. P. C. lib.* 2. *cap.* 42. *fol.* 124. *a. M.* 31 *Ed.* 3. *coram rege*, *Rot.* 18. *Rex*, *in dorſo*, *Bucks*, *caſus abbatis de Muſſenden pro reſecatione & falſificatione legalis monetæ.* 24 *H.* 8. *Spelman*'s Rep. accordant adjudge. 2 *Co. Inſt* 635, 636, *ſuper artic. cleri.*

So that at this day, in all caſes of high treaſon, whether thoſe declared by the ſtatute of 25 *Ed.* 3. *de proditionibus*, or other treaſons newly enacted ſince, the privilege of clergy is wholly taken away. 2 *H. H. P. C.* 332.

In

In all felonies, that were at common law, before the ſtatute of 25 *Ed.* 3. *pro Clero*, and in all caſes of petit treaſon by that ſtatute, the privilege of clergy is reſtored.

And therefore in all ſuch felonies and *petit* treaſons, which were ſuch at the time of the ſtatute of 25 *Ed.* 3. *cap.* 4. *pro Clero*, clergy is allowable, unleſs in ſuch caſes where it is taken away by ſubſequent acts of parliament, and ſo far forth only as the ſame is ſo taken away. *Id. ib.*

But there ſeem to be two felonies, where clergy was not allowable notwithſtanding this act, namely, certain acts that by interpretation of law were hoſtile acts, *viz.* 1. *Inſidiatio viarum & depopulatio agrorum.* 2. Wilful burning of houſes.

Concerning the former of theſe it appears, that *inſidiatores viarum* and *depopulatores agrorum* were ouſted of their clergy, notwithſtanding the ſtatute of 25 *Ed.* 3. *cap.* 4. *pro Clero.*

Rot. parl. 4 *H.* 4. *n.* 3. There was a complaint in parliament by the archbiſhop of *Canterbury* and clergy, whereupon it was enacted, that that general clauſe ſhould be left out in indictments, and words of the ſame effect inſerted; and that notwithſtanding the indictment carried the ſame effect, yet benefit of clergy ſhould not be denied, as appears at large by the ſtatute of 4 *H.* 4. *cap.* 2.

As to wilful burning of houſes, clergy was not allowable by the common law. 2 *H. H. P. C.* 333.

As to *ſacrilege*, though ſome later ſtatutes were made to ouſt clergy in that crime, yet it ſeems at common law, or at leaſt after the ſtatute of 25 *Ed.* 3. *c.* 4. *pro Clero*, it was allowable, as appears 26 *Aſſiſe* 27. where it is agreed by the juſtices, that a perſon indicted of robbing a chapel and breaking his church ſhould have his clergy; but it ſeems, it was with this difference, that if the ordinary refuſed him, as he might, he ſhould not have his clergy. 20 *Ed.* 2. *Coron.* 283. *Staunf. P. C.* 123, 124. But otherwiſe the court would allow it him. 26 *Aſſiſe* 27.

In what offences benefit of clergy is taken away by acts of parliament, ſubſequent to 25 *Ed.* 3. *c.* 4.

As to new felonies made by acts of parliament ſince 25 *Ed.* 3. this general rule holds, that if an act of parliament make a felony, and doth not take away clergy in expreſs words, in all theſe caſes, clergy is allowable. And if it doth make a felony and takes away clergy not generally, but in ſuch or ſuch caſes, regularly in other caſes clergy is allowable; as if it take away clergy in caſe the party be convicted by verdict, yet he ſhall have his clergy if he ſtand mute. 2 *Hale's Hiſ. P. C.* 334, 335.

But as to ſtanding mute, this is in part remedied by 3 *W. c.* 9. *ſect.* 2. which enacts, that if any perſon be *indicted* of any offence, for which by virtue of any *former* ſtatute he is excluded from clergy if he had been convicted by verdict or confeſſion, if he ſtand mute, or will not anſwer directly, or challenge peremptorily above twenty of the jury, or be outlawed, he ſhall not be admitted to his clergy. But this extends not to *appeals*, nor to offences made felonies by ſubſequent ſtatutes. 2 *Haw.* 348.

But if the ſtatute enacts generally, that it ſhall be felony without benefit of clergy, or that he ſhall ſuffer as in caſes of felony without benefit

of clergy, this excludes it in all circumſtances, and to all intents. 2 *H. H.* 335.

It follows farther, from what has been ſaid, that in all caſes where an act of parliament ouſteth clergy, in caſe of any felony, the indictment muſt preciſely bring the party within the caſe of the ſtatute; otherwiſe, although poſſibly the fact itſelf be within the ſtatute, and it may ſo appear upon the evidence, yet if it be not ſo alledged in the indictment, the party, though convict, ſhall have his clergy. 2 *H. H* 336.

But although the caſe be ſo laid in the indictment, that it comes within the ſtatute, to exempt the priſoner from clergy, yet if upon the evidence it fall out, that though it be a felony, yet it is not ſo qualified as laid in the indictment, the jury ought to find him guilty of the felony ſimply, but not ſo as to the matter laid in the indictment, and thereupon the priſoner ſhall be admitted to his clergy; and this is commonly done. 2 *H. H.* 336.

But if the offence was capital at common law, and a ſtatute only excluded it from clergy, the indictment in ſuch caſe need not *conclude againſt the form of the ſtatute*, becauſe the ſtatute doth not alter the nature of the offence, but leaves it to its proper judgment, and only takes away a perſonal privilege of exemption from ſuch judgment. 2 *Haw. P. C.* 342.

Furthermore, from what hath been obſerved above, it follows, that where an act taketh away clergy from the principal, and ſaith nothing of the acceſſary, the acceſſaries, as well before as after, ſhall have their clergy. 11 *Co.* 37.

For the ſeveral offences which have been excluded the benefit of clergy by acts of parliament made ſince 25 Ed. 3. c. 4. *See title* **Felony.**

What perſons are or are not capable of clergy.

By a favourable interpretation of the ſtatutes relating to the benefit of clergy, not only thoſe actually admitted into ſome inferior order of the clergy, but alſo thoſe who were never qualified to be admitted into orders (which was formerly tried by putting them to read a verſe) have been taken to have a right to this privilege, as much as perſons in holy orders. 2 *Haw.* 338.

By the common law, a woman could not have the benefit of clergy: But now by the ſtatute of 3 *Will. & M. cap.* 9. a woman convicted or outlawed for any felony, for which a man might have his clergy, ſhall upon praying the benefit of that ſtatute, be ſubject only to ſuch puniſhment as a man would be in the like caſe.

A perſon convicted of hereſy, a jew or a turk, ſhall not have their clergy; but a perſon excommunicate ſhall have his clergy. 2 *H. H.* 373.

Alſo every perſon (not being within orders) who hath been once admitted to his clergy ſhall not be admitted to the ſame a ſecond time. 4 *H.* 7. *c.* 13.

And if he is convicted of murder, he ſhall be marked (unleſs he is a peer, 2 *H. H.* 376) with an *M.* on the brawn of the left thumb; and if for any other felony with an *F.* by 4 *H.* 7. *c.* 13.

But he ſhall not be ouſted of his clergy, by the bare mark in his hand, or by a parol averment, without the record teſtifying, or a tranſcript thereof, according to the following ſtatutes. 2 *H. H.* 373.

By

By ſtat. 34 & 35 *H. cap.* 14. The clerk of the crown, or of the peace, or of aſſiſe, ſhall certify a tranſcript briefly of the tenor of the indictment, outlawry, or conviction, and attainder, into the King's Bench in forty days: And the clerk of the crown, when the judges of aſſiſe, or juſtices of the peace write to him for the names of ſuch perſons, ſhall certify the ſame with the cauſes of the conviction or attainder.

Another method is given by the Stat. 3 *W.* & *M. c.* 9. *ſ.* 7. which enacts that the clerk of the crown, clerk of the peace, or clerk of aſſize, where a perſon admitted to clergy ſhall be convicted, ſhall at the requeſt of the proſecutor, or any other on the king's behalf, certify a tranſcript briefly and in few words, containing the effect and tenor of the indictment and conviction, of his having the benefit of clergy, and the addition of the party, and the certainty of the felony and conviction, to the judges where ſuch perſon ſhall be indicted for any ſubſequent offence.

Alſo it ſeems, that if the party denies that he is the ſame perſon, iſſue muſt be joined upon it, and it muſt be found upon trial that he is the ſame perſon, before he can be ouſted of clergy. 2 *H. H.* 373.

At what time clergy is to be allowed, and the effect of allowing it.

By the ancient common law, the benefit of clergy was demanded as ſoon as the priſoner was brought to the bar, before any indictment or other proceeding againſt him; but this was found a great inconvenience to the priſoner, becauſe poſſibly he might have been acquitted of the felony; or if not, yet in caſe of an inqueſt of office he loſt his challenges to ſuch inqueſt, and yet upon ſuch inqueſt found, he forfeited his goods, and the profits of his lands; and therefore *Priſot* chief juſtice, with the advice of the other judges, in the reign of *Hen.* 6. for the ſafety of the innocent, would not allow the priſoner the benefit of clergy before he had pleaded to the felony, and (having the benefit of his challenges and other advantages) had been convicted thereof; which courſe hath been generally obſerved ever ſince. 2 *Inſt.* 164. 2 *H. H.* 378.

And this benefit of clergy may be allowed by the court in diſcretion, though the party challenges it not. *Hale's Pl.* 239.

Perſons admitted to their clergy, may be continued in priſon, as a further puniſhment, not exceeding one year. 18 *Eliz. cap.* 7.

By *ſtat.* 4 *Geo.* 1. *cap.* 11. perſons convicted of offences within benefit of clergy (except receivers and buyers of ſtolen goods) may, inſtead of being whipped and burnt in the hand, be tranſported for ſeven years.

A perſon admitted to his clergy, forfeits all his goods that he hath at the time of the conviction. 2 *H. H.* 388.

But preſently, upon burning in the hand, he ought to be reſtored to the poſſeſſion of his lands, and from thenceforth to enjoy the profits thereof. 2 *H. H.* 388.

Alſo it reſtores him to his credit; and conſequently enables him to be a good witneſs. 2 *Haw.* 364.

And it is holden, that after a man is admitted to his clergy, it is actionable to call him felon; becauſe his offence being pardoned by the ſtatute, all the infamy and other conſequences of it are diſcharged. 2 *Haw.* 365.

Clerk of the Peace.

CLERK of the peace *(Clericus pacis)*, is an officer belonging to the ſeſſions of the peace. His duty is, in the ſeſſions, to read the indictments, to enrol the acts, and draw the proceſs: To record the proclamation of rates for ſervants wages, to enrol the diſcharge of apprentices, to keep the counterpart of the indentures of armour, to keep the regiſter-book of licences given to badgers and laders of corn, and of thoſe that are licenſed to ſhoot in guns, and to certify into the King's Bench tranſcripts of indictments, outlawries, attainders, and convictions had before the juſtices of the peace, within the time limited by ſtatute. *Lambard's Eiren. lib.* 4. *cap.* 3. *fol.* 379.

Stat. 37 *Hen.* 8. *c.* 1. [*A. D.* 1545. *intituled*] "A bill for *cuſtos rotulorum* and the clerkſhip of the peace."

Who ſhall appoint the *cuſtos rotulorum*, and clerk of the peace in every county.

Inconveniences enſuing by the ignorance of the clerk of the peace.

"Where before this time the lord chancellor of *England* for the time being hath, by reaſon of his office of the chancellorſhip, the nomination and appointment of the *cuſtos rotulorum* within all and every ſhire of this realm of *England* and *Wales*, and other the king's dominions, marches and territories of the ſame, (2) and that in like manner all and every perſon, which had and enjoyed the ſaid office of the *cuſtos rotulorum*, hath had, until now of late, the nomination and appointment of the clerk of the peace within ſuch ſhires where he or they had and enjoyed the ſaid office of the *cuſtos rotulorum: (3)* And where now of late divers and ſundry perſons within this realm, being not learned, nor yet meet ne able for lack of knowledge and learning to occupy and exerciſe the ſaid office of the *cuſtos rotulorum*, and of the clerkſhip of the peace, have of late years by labour, friendſhip and means, attained and gotten for term of their lives, of the king's majeſty, ſeveral grants by his highneſs letters patent to them made of the ſaid clerkſhips of the peace; by reaſon whereof, and for that that the parties to whom the ſaid ſeveral grants have been ſo made and granted, have not been ſufficiently learned to exerciſe and occupy the ſame office and offices, many and ſundry indictments, as well of felony, murder, and other offences and miſdemeanors, and the proceſs awarded upon the ſame indictments, have not only by reaſon thereof been made clearly fruſtrate and void, ſometime by reaſon of the negligent ingroſſing and keeping of the ſaid indictments, and ſometime by reaſon of the imbezilling or raſure of the ſame indictments, *(4)* but alſo divers and ſundry bargains and ſales of divers and ſundry manors, lands and tenements had and made between party and party, have been made fruſtrate and void for lack of ſufficient inrolment of the bargains and ſales to be had and made, by the clerks of the peace, to the great hindrance of juſtice, and to the diſinheritance of divers of the king's moſt loving ſubjects.

The cuſtos rotulorum ſhall be appointed in every county by bill ſigned with the king's own hand. Altered by 3 & 4 Ed. 6. c. 1. ſ. 3. 4 Mod. 167 1 Shower 430, 431.

Sect. 2. "For reformation whereof, to the intent that juſtice may be the better hereafter preferred, and that the ſame offices may hereafter be occupied and exerciſed by ſuch perſons learned in the laws of this realm, as ſhall be able to exerciſe and ſupply the ſame: (2) Be it enacted by the king our ſovereign lord, with the aſſent of the lords ſpiritual and temporal, and of the commons, in this preſent parliament aſſembled, and by authority of the ſame, That no perſon or perſons ſhall from henceforth be nominated and appointed to the ſaid office and offices of the *cuſtos rotulorum* within any ſhire of this realm of *England*, *Wales* and other the king's dominions, marches, or territories of the ſame, but ſuch as ſhall have a bill ſigned with the king's hand for the ſame; (3) which bill ſigned ſhall be a ſufficient warrant by the authority aboveſaid, to the ſaid lord chancellor of *England*, and the lord keeper of the great ſeal for the time being, to make from time to time commiſſion or commiſſions, aſſigning and authorizing thereby the ſame perſon to be *cuſtos rotulorum*, until the king hath, by another bill aſſigned with his own hand, appointed and ordained one other perſon to have, occupy and exerciſe the ſame office of the *cuſtos rotulorum*, (4) and that the ſaid perſon appointed and aſſigned to be *cuſtos rotulorum*, as is aboveſaid, ſhall and may occupy, exerciſe and enjoy the ſame office of the *cuſtos rotulorum*, by himſelf, or by his ſufficient deputy, learned in the laws of this realm, and meet and able to ſupply the ſaid office according to the tenor of the ſaid grant or commiſſion.

The cuſtos rotulorum ſhall appoint the clerk of the peace. Carthew 426.

Sect. 3. "And be it further enacted by the authority of this preſent parliament, That every *cuſtos rotulorum* for the time being ſhall, at all times hereafter in every ſhire of this realm, *Wales*, and other the king's dominions, marches, and territories of the ſame, nominate, elect, appoint and aſſign all and every perſon and perſons which hereafter ſhall be clerks of the peace within any of the ſaid ſhires of this realm of *England*, *Wales*, and other the king's dominions, marches and territories of the ſame, (2) and to give and grant the ſaid office and offices of the clerkſhip of the peace to ſuch able perſon inſtructed in the laws of this realm, as ſhall be able to exerciſe and occupy the ſame, to hold and enjoy the ſame during the time that the ſaid *cuſtos rotulorum* ſhall occupy and exerciſe the aforeſaid office of *cuſtos rotulorum*; ſo that the ſaid clerk demean him in the ſaid office juſtly and honeſtly: (3) And that it be lawful to every ſuch grantees of the ſaid clerkſhip, to occupy and enjoy the ſame office of the clerkſhip of the peace, by himſelf, or by his ſufficient deputy inſtructed in the laws of this realm, ſo that the ſame deputy be admitted, taken and reputed by the ſaid *cuſtos rotulorum*, to be ſufficient and able to exerciſe, occupy, keep and enjoy the ſame office of the clerkſhip of the peace."

The clerk of the peace may make a deputy by the aſſent of the cuſtos rotulorum.

Sect. 4. "Provided alway, and be it enacted by the authority aforeſaid, That all ſuch as now have any of the ſaid offices of *cuſtos rotulorum*, or clerkſhip of the peace, by the king's letters patents, or commiſſion to them made, ſhall and may enjoy, have and exerciſe their ſaid offices by virtue of the ſame letters patents, or commiſſion, by themſelves, or by their ſufficient

and

and able deputy inſtructed in the laws of this realm; any thing in this preſent act had or made to the contrary notwithſtanding."

Sect. 5. "Provided alſo, and be it enacted by authority aboveſaid, That the archbiſhop of *York*, the biſhop of *Durham*, the biſhop of *Ely*, and every of their ſucceſſors, and all and every ſuch perſon and perſons, corporations, and bodies corporated, to whom the king's majeſty, or any of his noble progenitors by his or their letters patents have given and granted any liberty and authority, or otherwiſe have authority by other lawful means or ways, to ordain, make and conſtitute any of the ſaid officers of *cuſtos rotulorum*, or clerk of the peace within the county palatine, or other place, ſhall and may have and enjoy the ſame liberty and authority, according as they have had and enjoyed the ſame; any thing in this preſent act had or made to the contrary notwithſtanding."

Perſons having authority to aſſign cuſtos rotulorum, or clerk of the peace.

Stat. 1 *Will. & Ma. c.* 21. [*A. D.* 1688. *intituled*] "An act for enabling lords commiſſioners for the great ſeal to execute the office of lord chancellor or lord keeper."

Sect. 4. "And be it further enacted by the authority aforeſaid, That the nominating and appointing of the *cuſtos rotulorum*, throughout all the ſhires and counties of this realm, is and ſhall be as is directed by a ſtatute made in the thirty-ſeventh year of *Henry* the eighth, intituled, *A bill for cuſtos rotulorum, and the clerkſhip of the peace*; any law, uſage, or ſtatute to the contrary in any wiſe notwithſtanding."

Cuſtos rotulorum how to be choſen. 37 H. 8. c. 1.

Sect. 5. "And be it further enacted by the authority aforeſaid, That the *cuſtos rotulorum*, or other perſon, to whom of right it doth or ſhall belong to nominate or appoint the clerk of the peace for any county, riding, diviſion, or other place, ſhall, from time to time, where the office of the clerk of the peace now is, or hereafter ſhall be void, nominate and appoint one able and ſufficient perſon reſiding in the ſaid county, riding, diviſion or other place, for which he is ſo appointed or to be appointed clerk of the peace, to execute the ſame by himſelf or his ſufficient deputy, and to take and receive the fees, profits, and perquiſites thereof, for ſo long time only as ſuch clerk of the peace ſhall well demean himſelf in his ſaid office."

Clerk of the peace how to be appointed. Carthew 426.

Sect. 6. "And be it enacted by the authority aforeſaid, That if any clerk of the peace already nominated or to be nominated, as aforeſaid, ſhall miſdemean himſelf in the execution of the ſaid office, and thereupon a complaint and charge in writing of ſuch miſdemeanor ſhall be exhibited againſt him to the juſtices of the peace in their general quarter-ſeſſions, it ſhall be lawful for the ſaid juſtices, or the major part of them, from time to time, upon examination and due proof thereof, openly in their ſaid general quarter-ſeſſions to ſuſpend or diſcharge him from the ſaid office; and that in ſuch caſe the *cuſtos rotulorum*, or other perſon, to whom it ſhall of right belong to nominate and appoint the clerk of the peace for ſuch county, riding, diviſion or place, ſhall nominate and appoint one other able and ſufficient perſon reſiding in the ſaid county, riding, diviſion or place as aforeſaid, to be clerk of the peace in the place of ſuch perſon ſo amoved,

Juſtices of the peace may diſcharge clerk of the peace.

Who ſhall nominate upon ſuch vacancy.

as aforeſaid; and in caſe of refuſal or neglect to make ſuch nomination and appointment, before the next general quarter-ſeſſions to be holden after the ſaid refuſal, that it ſhall and may be lawful for the ſaid juſtices of the peace, at their general quarter-ſeſſions for the ſaid county, riding, diviſion or place, or the major part of them, to nominate and appoint one able and ſufficient perſon reſiding in the ſaid county, riding, diviſion or place, to be clerk of the peace in the place of ſuch perſon ſo amoved, as aforeſaid, to have, hold, and enjoy the ſaid office of clerk of the peace, and to execute the ſame by himſelf or his ſufficient deputy, and to receive the fees, profits and perquiſites thereof."

New clerk of the peace liable to penalties, &c.

Sect. 7. "Provided always, and be it enacted by the authority aforeſaid, That he ſhall be liable and ſubject to all the penalties, forfeitures conditions, limitations and proviſions herein and hereby mentioned and expreſſed, and may be amoved or diſcharged by the ſaid juſtices, or the major part of them, in ſuch manner and way as is above ſpecified."

Cuſtos rotulorum, &c. ſhall take no fee.

Sect. 8. "And be it further enacted by the authority aforeſaid, That it ſhall not be lawful for any *cuſtos rotulorum*, or other perſon to whom of right it doth or ſhall belong to nominate, elect, or appoint any clerk of the peace, to ſell the ſaid place of clerk of the peace, or to take any bond or other aſſurance to receive or have any reward, money, fee or profit, directly or indirectly, to him or any other perſon for ſuch nominating, electing, or appointing; but that every ſuch *cuſtos rotulorum*, or other perſon that ſhall ſo ſell the clerkſhip of the peace, and every clerk of the peace, who ſhall ſo buy this place, are hereby diſabled to hold their places of *cuſtos rotulorum*, or clerkſhip of the peace, and ſhall alſo each of them reſpectively forfeit double the ſum or value of other thing that ſhall be ſo given or taken, to be recovered by him or them to their own uſe, that ſhall ſue for the ſame, to be proſecuted by any action of debt, ſuit, bill, plaint or information, in any of their majeſties courts at *Weſtminſter*, wherein no eſſoign, protection or wager of law ſhall lie."

Penalty upon buyer and ſeller.

Clerk of the peace to take the following oath.

Sect. 9. "And be it further enacted by the authority aforeſaid, That every clerk of the peace, before he enter upon the execution of his ſaid office, ſhall in open ſeſſions take the oath following, *viz.*"

I A. B. *do ſwear, that I have not, nor will pay any ſum or ſums of money, or other reward whatſoever, nor given any bond or other aſſurance to pay any money, fee, or profit, directly or indirectly to any perſon or perſons whomſoever, for ſuch nomination or appointment.*

So help me God.

Not to extend to Lancaſter.

Sect. 10. "Provided always, That nothing in this act contained ſhall any ways affect or relate to the clerk of the peace for the dutchy and county palatine of *Lancaſter* only; which ſaid clerk of the peace holds his ſaid office for lives by grants from his late majeſty king *Charles* the ſecond, as his predeceſſors in the ſaid place have done, from former kings and queens

queens of this realm, in right of their dutchy and county palatine aforeſaid. This act to commence from the firſt day of *May* one thouſand ſix hundred ſixty-nine.

The clerk of the peace *muſt make out all proceſs*, and when they are compleat muſt *deliver them to the cuſtos*; but as long as they are in proceſs, they are not to be with the clerk, but for refuſing to deliver the rolls to the *cuſtos*, he was indicted and *removed*, and a *mandamus* to reſtore him was denied *per* three juſtices againſt the chief juſtice. 4 *Mod.* 31. *Paſch.* 3 *W. & M.* in *B. R.* The *King and Queen* v. *Evans.*

Indebitatus aſſumpſit, and *non aſſumpſit* pleaded, the jury found the *ſtat.* 27 *H.* 8. and 1 *W. & M.* and the ſeveral clauſes in them about the clerk of the peace; that the earl of *Clare* was *cuſtos rotulorum* of *Middleſex*, and that he *named the plaintiff to be clerk of the peace*, to exerciſe the office by him or his deputy, *Quamdiu ſe bene geſſerit*; that the plaintiff *was capable of the office, and duly admitted*; *that the earl of* Clare *was afterwards removed, and the earl of* Bedford *made* cuſtos rotulorum, *who conſtituted*, by writing under hand and ſeal, *the defendant*, during the time he was *cuſtos rotulorum*, *quamdin* the defendant *ſe bene geſſerit*; and on ſolemn argument, judgment *pro' quer. per tot. cur.* for that he had an eſtate for life, and was not removeable by the new *cuſtos*. 12 *Mod.* 42. *Trin.* 5 *W. & M. Harcourt* v. *Fox.*

By the ſtatute 1 *W. & M.* the *cuſtos rotulorum is to appoint a clerk of the peace for ſo long time only as he ſhall demean himſelf well. Owen* brought a *mandamus* to the juſtices to reſtore him to that office. The return was, that the earl of *Winchelſea*, who was *cuſtos rotulorum*, did *appoint* P. *to be clerk of the peace durante beneplacito, &c.* that the ſaid earl being dead, the lord *Sydney* was made *cuſtos*, who appointed *S.* to be clerk of the peace of *Kent*, purſuant to the ſaid act, The queſtion was, whether a grant of this office during pleaſure, which is only an eſtate at will, ſhall be ſo governed by the ſtatute as to make it an eſtate for life, when once the perſon is admitted to the office; ſo that let the *cuſtos* make what appointment he will, though not purſuant to the ſtatute, it is the ſtatute, and not the *cuſtos*, which gives an intereſt and eſtate to the nominee? Adjudged, that no peremptory *mandamus* ſhall go; for, by the act the *cuſtos* is to nominate a clerk to execute the office ſo long as he ſhall demean himſelf well, *&c.* and if he appoint him in any other manner, he is no clerk of the peace, ſo that appointing during pleaſure is not purſuant to the act; for he has not executed the authority given him by the act, and ſo the defendant has no title. 4 *Mod.* 293. *Trin.* 6 *W. & M. in B. R. The king* v. *Owen.*

It always belonged to the *cuſtos rotulorum* to *nominate* the clerk of the peace, but the clerk of the peace was *removeable* when ever the *cuſtos* was removed or changed, and moreover, was removeable at the will of the *cuſtos* till 37 *H.* 8. 1. which makes him to continue in *quouſque* the *cuſtos* ſhall continue in; but now, by the late act, he is to continue for life; and though the words are, *give and grant to him*, yet it is only an appointment, and conſequently may be without deed. 2 *Salk.* 467. *Trin.* 10 *W.* 3. *B. R. Sanders* v. *Owen.*

He is no more than a *miniſterial officer*, and a record made by him is not to be pleaded as a *record*, and will not conclude the judgment of *B. R. Arg.* 8 *Mod.* 43. *Paſch.* 7 *Geo.* 1. in the caſe of *Colvin* v. *Fletcher*.

By *ſtat.* 34 & 35 *H.* 8. *c.* 14. the clerk of the peace ſhall certify into the King's Bench the names of ſuch as ſhall be out-lawed, attainted, or convicted of felony.

By *ſtat.* 22 & 23 *Car.* 2. *c.* 22. *ſect.* 7. the clerk of the peace ſhall deliver to the ſheriff, within ten days after *Sept.* 29, yearly, a perfect eſtreat or ſchedule of all fines and other forfeitures in ſeſſions.

Sect. 8. And alſo ſhall yearly, on or before the ſecond *Monday* after the morrow of *All Souls*, deliver into the Exchequer a duplicate of ſuch eſtreats ſo delivered to the ſheriffs, that the ſheriffs may be charged therewith on their appoſals, on pain to forfeit 50 *l.* the one moiety to the king, the other to the proſecutor.

Sect. 9. And if he ſhall ſpare, take off, diſcharge, or conceal any ſuch fine or forfeiture, unleſs it be by rule of court, he ſhall forfeit treble value; half to the king, and half to him that ſhall ſue; and ſhall alſo forfeit his office, and be incapable to be employed in any office where the revenue is concerned.

By *Stat.* 4 & 5 *W.* & *M. c.* 24. *ſect.* 5. the clerk of the peace ſhall, upon delivery of the eſtreats into the court of *Exchequer*, take the following oath, to be adminiſtered by one of the barons:

" *You ſhall ſwear, that theſe eſtreats, now by you delivered, are truly and carefully made up and examined, and that all fines, iſſues, amercements, recognizances and forfeitures, which were ſet, loſt, impoſed, or forfeited, and in right and due courſe of law ought to be eſtreated in the court of* Exchequer, *are, to the beſt of your knowledge and underſtanding, therein contained, and that in the ſame eſtreats are alſo contained and expreſſed all ſuch fines as have been paid into the court, from which the ſaid eſtreats are made, without any wilful or fraudulent diſcharge, omiſſion, miſnomer, or defect whatſoever.*"

By ſtat. 3 *Geo.* 1. *c.* 15. *ſect.* 12. The barons of the Exchequer may amerce the clerk of the eſtreats, for neglecting to return the eſtreats according to the ſaid two acts of 22 & 23 *Car.* 2. *c.* 22. and 4 & 5 *W.* & *M. c.* 24.

By ſtat. 10 & 11 *Will.* 3. *ſect.* 7. 8. clerk of the peace ſhall have only 2 *s.* for drawing an indictment of felony; and if it is defective, he ſhall draw a new one *gratis*, on pain of 5 *l.* with full coſts, to him that ſhall ſue.

By *ſtat.* 2 *Geo.* 2. *c.* 46. *ſect.* 14. No clerk of the peace, or his deputy, ſhall act as ſolicitor, attorney, or agent, or ſue out any proceſs at any general or quarter-ſeſſions, when he ſhall execute the office of clerk of the peace or deputy; on pain of 50 *l.* to him who ſhall ſue in 12 months, with treble coſts.

Clocks and Watches.

STATUTE 27 *Geo.* 2. *c.* 7. [*A. D.* 1754. *Intituled*] "An act for the more effectual preventing of frauds and abuſes committed by perſons employed in the manufacture of clocks and watches."

"Whereas many perſons, employed in the making of clocks and watches, have of late been guilty of divers frauds and abuſes by purloining, imbezilling, ſecreting, ſelling, pawning, or otherwiſe unlawfully diſpoſing of the clocks and watches, or ſuch parts thereof, or the materials for making the ſame, with which they have been intruſted, to the great loſs of their employers; and the laws in being have been found inſufficient to prevent ſuch frauds and abuſes, and to puniſh the offender; Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons whatſoever, who ſhall be hired or employed by any perſon or perſons practiſing the trade or trades of clock-making or watch-making, or any part or branch, or parts or branches of ſuch trade or trades, to make, finiſh, alter, repair or clean any clock or clocks, watch or watches, or any part or parts of a clock or clocks, watch or watches, or be intruſted by any perſon or perſons practiſing the ſaid trade or trades, with any gold, ſilver or other metal or materials to be, or that ſhall be in the whole or in part wrought or manufactured for any part or parts of a clock or clocks, watch or watches, or any diamond or other precious ſtone to be, or that ſhall be ſet or fixed in or about any clock or clocks, watch or watches, ſhall, after the firſt day of *May* one thouſand ſeven hundred and fifty-four, purloin, imbezil, ſecrete, ſell, pawn, exchange, or otherwiſe unlawfully diſpoſe of any clock or watch, or any part or parts of any clock or watch, or any gold, ſilver or other metal or material, or any part thereof, or any diamond or other precious ſtone, with which ſuch perſon or perſons ſhall be intruſted by any perſon or perſons practiſing the ſaid trade or trades, or any part or branch, or parts or branches of ſuch trade or trades, and ſhall be thereof convicted by the oath of the owner of ſuch goods, or by the oath of any other credible witneſs or witneſſes, or by the confeſſion of the perſon or perſons charged with ſuch offence, before any one or more juſtice or juſtices of the peace of the county, riding, diviſion, city, liberty, town or place, where ſuch offence ſhall be committed, or where the perſon or perſons ſo charged ſhall reſide or inhabit (which oath the ſaid juſtice or juſtices is and are hereby impowered and required to adminiſter); every ſuch offender ſhall for the firſt offence forfeit twenty pounds; and in caſe the ſaid forfeiture ſhall not be forthwith paid,

Penalty on conviction of frauds committed by the perſons employed in the manufacture of clocks and watches.

First offence.

paid, the juſtice or juſtices, before whom ſuch conviction ſhall be had, ſhall commit the party or parties ſo convicted to the houſe of correction or other publick priſon of ſuch county, riding, diviſion, city, liberty town or place, there to be kept to hard labour for the ſpace of fourteen days, unleſs ſuch forfeiture ſhall be ſooner paid; and if within two days before the expiration of ſuch fourteen days, ſuch forfeiture ſhall not be paid, the ſaid juſtice or juſtices is and are hereby impowered to order the perſon or perſons ſo convicted to be publickly whipped at the market place, or ſome other publick place of the city, town or place, where ſuch offender or offenders ſhall be reſpectively committed; and in caſe of a further conviction in manner before preſcribed by this act, for or upon a ſecond or other ſubſequent offence of the ſame kind, the perſon or perſons ſo again offending, being thereof convicted in manner aforeſaid, ſhall for every ſecond or ſubſequent offence forfeit forty pounds; and in caſe the ſaid forfeiture ſhall not be forthwith paid, the juſtice or juſtices before whom ſuch conviction ſhall be had, ſhall commit the perſon or perſons ſo again offending to the houſe of correction or other publick priſon as aforeſaid, there to be kept to hard labour for any time not exceeding three months, nor leſs than one month, unleſs the ſaid forfeiture ſhall be ſooner paid; and if within ſeven days before the expiration of the time for which ſuch offender or offenders ſhall be committed, the ſaid forfeiture ſhall not be paid, the ſaid juſtice or juſtices is and are hereby impowered to order the perſon or perſons ſo again offending to be publickly whipped at the market place, or ſome other publick place of the city, town or place, where ſuch offender or offenders ſhall be reſpectively committed, twice or oftener, as to ſuch juſtice or juſtices ſhall appear reaſonable.

Subſequent offence.

Penalty of buying, &c. any of the goods or materials, knowing the ſame to be purloined.

Sect. 2. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons ſhall buy, receive, accept or take by way of gift, pawn, pledge, ſale or exchange, or in any other manner whatſoever, of or from any perſon or perſons whomſoever, any clock or watch, or any part or parts of a clock or watch, or any gold, ſilver or other metal or materials as aforeſaid, whether the ſame, or any part thereof, be or be not wrought or manufactured, or any diamond, or other precious ſtone, which ſhall have been intruſted with any perſon or perſons hired or employed as aforeſaid, by any perſon or perſons practiſing the ſaid trade or trades, he, ſhe or they, ſo buying, receiving, accepting or taking any ſuch goods, materials or effects, knowing the ſame to be ſo purloined or imbezilled, being thereof lawfully convicted in manner before preſcribed, for the conviction of perſons purloining or imbezilling the ſaid goods, materials or effects, ſhall, for the firſt offence, forfeit twenty pounds; and in caſe the ſaid forfeiture ſhall not be forthwith paid, the juſtice or juſtices, before whom ſuch conviction ſhall be had, ſhall commit the party or parties ſo convicted, to the houſe of correction or other public priſon as aforeſaid, there to be kept to hard labour, for the ſpace of fourteen days, unleſs the ſaid forfeiture ſhall be ſooner paid; and if within two days before the expiration of the ſaid fourteen days, the ſaid forfeiture ſhall not be paid, the ſaid juſtice or juſtices is and are hereby impowered and required, to order the perſon or perſons ſo convicted to be publickly whipped at the market-place, or ſome other publick place of the city, town, or place, where

First offence.

where such offender or offenders shall be respectively committed, once or oftener, as to such justice or justices shall appear reasonable; and in case of a further conviction for or upon a second or any other subsequent offence of the same kind, the person or persons so again offending, being thereof convicted in manner before prescribed, shall, for every second or other subsequent offence, forfeit forty pounds; and in case the said forfeiture shall not be forthwith paid, the justice or justices, before whom such conviction shall be had, shall commit the party or parties so convicted to the house of correction, or other publick prison as aforesaid, there to be kept to hard labour for any time not exceeding three months, nor less than one month, unless the said forfeiture shall be sooner paid; and if within seven days before the expiration of the time for which such offender or offenders shall be committed, the said forfeiture shall not be paid, the said justice or justices is and are hereby impowered and required to order such offender or offenders to be publickly whipped at the market-place, or some other publick place of the city, town or place where such offender or offenders shall be respectively committed, twice or oftener, as to such justice or justices shall appear reasonable; and the said respective forfeitures, when recovered, after satisfaction shall have been made thereout to the party or parties injured, together with such costs of prosecution as shall be judged reasonable by the justice or justices before whom such conviction shall have been had, shall be paid and applied to and for the use of the poor of the parish or place where the person or persons so convicted shall reside or inhabit.

Subsequent offence.

Application of the forfeitures.

Sect. 3. "Provided always, and it is hereby enacted, That if any person convicted as aforesaid, of purloining, embezilling, secreting, selling, pawning, exchanging, or otherwise unlawfully disposing of, or of buying, receiving or taking to pawn any of the goods, materials or effects, herein before-mentioned, shall think himself or herself aggrieved by the judgment of the justice or justices before whom he or she shall have been convicted, such person shall have liberty to appeal to the justices at the next general or quarter sessions of the peace, which shall be held for the county, riding, division, city, liberty, town or place, where such judgment shall have been given; and that the execution of the said judgment shall in such case be suspended, the person so convicted entering into a recognizance at the time of such conviction, with two sufficient sureties, in double the sum which such person shall have been adjudged to forfeit, upon condition to prosecute such appeal with effect, and to be forth-coming to abide the judgment and determination of the justices in the said general or quarter sessions; which recognizance the said justice or justices before whom such conviction shall be had is and are hereby impowered and required to take; and the justices in the said general or quarter sessions are hereby authorized and required to hear and finally determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable, to be paid by either party; and if, upon the hearing of the said appeal, the judgment of the justice or justices before whom the appellant shall have been convicted shall be

Appeal to the quarter-sessions.

Recognizance with sureties.

Justices to hear and determine.

affirmed, ſuch appellant ſhall immediately pay the ſum which he or ſhe ſhall have been adjudged to forfeit, together with ſuch coſts as the juſtices in the ſaid general or quarter ſeſſions ſhall award to be paid by him or them, for defraying the expences ſuſtained by the defendant or defendants in ſuch appeal; or in default of making ſuch payments, ſhall ſuffer the reſpective pains and penalties by this act inflicted upon perſons reſpectively who ſhall neglect to pay, or ſhall not pay the reſpective forfeitures by this act impoſed upon ſuch perſons reſpectively, who ſhall be convicted of purloining, embezilling, ſecreting, ſelling, pawning, exchanging, or otherwiſe unlawfully diſpoſing of any of the goods, materials or effects herein before-mentioned, or of perſons buying, receiving or taking to pawn any of ſuch goods, materials or effects.

and to award coſts, &c.

Form of the conviction;

Sect. 4. "And be it further enacted by the authority aforeſaid, That the juſtice or juſtices of the peace before whom any perſon ſhall be convicted, in manner preſcribed by this act, of purloining, embezilling, ſecreting, ſelling, pawning, exchanging, or otherwiſe unlawfully diſpoſing of, or of buying, receiving or taking to pawn any of the goods, materials or effects aforeſaid, ſhall cauſe ſuch reſpective conviction to be drawn up in the form and words following; that is to ſay,

"*Middleſex, to wit.* } BE it remembered, That on the Day of in the year of his majeſty's reign, *A. B.* was convicted before me (or us) of his majeſty's juſtices of the peace for the ſaid county of or for the riding (or diviſion) of the ſaid county of or for the city, liberty or town of in the ſaid county of (as the caſe ſhall be) of purloining, embezilling, ſecreting, ſelling, pawning, exchanging, or unlawfully diſpoſing of, or of buying, receiving or taking to pawn (as the caſe ſhall happen to be) (ſpecifying the reſpective goods, materials or effects) the property of *C. D.* of in the county of

Given under my hand and ſeal (or our hands and ſeals) the day and year aforeſaid.

not to be removed by *certiorari*, and to be tranſmitted to the next quarter-ſeſſions, &c.

Which ſaid form and conviction ſhall not be liable to be removed by *certiorari* into his majeſty's court of *King's Bench*; and the ſaid juſtice or juſtices, before whom ſuch conviction ſhall be had, ſhall cauſe the ſame, drawn up in the form aforeſaid, to be fairly written upon parchment, and tranſmitted to the next general or quarter ſeſſions of the peace, to be held for the county, riding, diviſion, city, town or liberty wherein ſuch conviction was had, to be filed and kept amongſt the records of the ſaid general or quarter ſeſſions; and in caſe any perſon or perſons ſo convicted ſhall appeal from the judgment of the ſaid juſtice or juſtices to the ſaid general or quarter ſeſſions, the juſtices in ſuch general or quarter ſeſſions are hereby required upon receiving the ſaid conviction, drawn up in the form aforeſaid, to proceed to the hearing and determination of the matter of the ſaid appeal, according to the directions of this act; any law or uſage to the contrary notwithſtanding.

Sect.

Sect. 5. "And be it further enacted by the authority aforesaid, That it shall and may be lawful to and for any one justice of the peace of any county, riding, division, city, liberty, town or place, and he is hereby required, upon complaint to him made upon oath, of any offence committed against this act within the same county, riding, division, city, liberty, town or place, to issue his warrant for apprehending and bringing before him, or before any other justice or justices of the peace of the same county, riding, division, city, liberty, town or place, the person or persons charged with such offence; and the justice or justices, before whom such person or persons shall be brought, is and are hereby authorized and required to hear and determine the matter of every such complaint, and to proceed to conviction and judgment thereupon." Justice, upon complaint on oath, to issue his warrant for apprehending any offender, and to hear and determine the matter.

Coals and Coal-pits.

BY *stat.* 10 *Geo.* 2. *c.* 32. *sect.* 6. If any person shall wilfully and maliciously set on fire any mine, pit, or delph of coal, or cannel coal, he shall be guilty of felony without benefit of clergy. *See* Burning, page 486.

Stat. 13 *Geo.* 2. *c.* 21. [*A. D.* 1740. *intituled*] "An act for further and more effectually preventing the wilful and malicious destruction of collieries and coal works."

"Whereas of late divers evil-disposed persons, possessed of or interested in collieries, have by secret and subtil devices wilfully and maliciously attempted to drown adjacent collieries, and have by means of water conveyed or obstructed for that purpose destroyed or damaged the same, intending thereby to enhance the price of coals, and gain the monopoly thereof: And whereas by an act made in the tenth year of the reign of his present majesty it was enacted, That if any person or persons shall wilfully and maliciously set on fire, or cause to be set on fire, any mine, pit, or delph of coal, or cannel coal, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall suffer death as in cases of felony, without benefit of clergy: And whereas it is reasonable that an adequate punishment should likewise be inflicted on persons who shall wilfully and maliciously destroy or damage collieries by means of water, as aforesaid; Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, Preamble reciting the act 10 *Geo.* 2. *c.* 32.

Perſons drowning coal pits, ſhall pay treble damages, and full coſts.

ſembled, and by the authority of the ſame, That if any perſon, from and after the twelfth day of *June* one thouſand ſeven hundred and forty, ſhall unlawfully, wilfully, and maliciouſly divert, or cauſe to be diverted water from any river, brook, watercourſe, channel, or land flood, or convey, or cauſe to be conveyed water into any coal work, mine, pit, or delph of coal, or into any ſubterraneous cavities or paſſages, or make, or cauſe to be made any ſubterraneous cavities or paſſages, with deſign thereby to deſtroy or damage any coal work, mine, pit, or delph of coal belonging to any other perſon or perſons, or ſhall for that purpoſe unlawfully, wilfully, and maliciouſly deſtroy or obſtruct any ſough or ſewer (which has been a ſough or ſewer in common for fifty years) made for draining any coal work, mine, pit, or delph of coal, or ſhall attempt or continue any ſuch miſchievous practice, or ſhall aid or aſſiſt therein in manner aforeſaid; every ſuch perſon ſhall, for every ſuch offence, forfeit and pay to the party or parties aggrieved treble damages, and full coſts of ſuit, to be ſued for and recovered by action of debt, bill, plaint or information in any of his majeſty's courts of record at *Weſtminſter*.

Except ſuch coal pits are their own.

Sect. 2. "Provided always, That nothing in this act contained ſhall prevent or reſtrain, or be conſtrued to prevent or reſtrain any perſon or perſons, being the owner or owners of any ſough, drain, or ſewer, from deſtroying, obſtructing, or diverting, uſing, or diſpoſing of any ſuch ſough, drain, or ſewer, in ſuch manner as he, ſhe, or they reſpectively may now lawfully do.

Stat. 17 *Geo.* 2. *c.* 35. [*A. D.* 1744. *intituled*] "An act to explain, amend, and enlarge an act made in the ſixteenth and ſeventeenth year of the reign of king *Charles* the ſecond, intitled, *An act for regulating the meaſures and prices of coals.*"

16 & 17 *Car.* 2. *c.* 2.

"Whereas by an act made in the ſixteenth and ſeventeenth year of the reign of king *Charles* the ſecond, intituled, *An act for regulating the meaſures and prices of coals*, it is (amongſt other things) enacted, That the lord mayor of *London*, and the court of aldermen, for the time being, and the juſtices of peace of the ſeveral and reſpective counties and places where coals, commonly called *ſea coals*, brought into the river of *Thames*, are ſold by retail, or any three or more of them, whereof one to be of the *quorum*, ſhould be, and are thereby impowered to ſet the rates and prices of all ſuch coals as ſhould be ſold by retail, as they from time to time ſhould judge reaſonable, allowing a competent profit to the ſaid retailer, beyond the price paid by him to the importer, and the ordinary charges thereupon accruing: And whereas many exactions and abuſes are uſed by retailers of ſea coals, brought by ſea into other rivers, creeks, havens, ports, cities, boroughs, towns, counties and places, within the kingdom of *England*, dominion of *Wales*, and town of *Berwick* upon *Tweed*, beſides ſuch counties and places where ſuch coals brought into the river *Thames* were and are ſold by retail: for avoiding

of which exactions and abuſes in ſuch other counties and places as aforeſaid, a like remedy is needful to be provided, as by the ſaid recited act is provided, touching the retailers of coals brought into the ſaid river of *Thames*, and ſold; wherefore Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the twenty-fourth day of *June*, in the year of our Lord one thouſand ſeven hundred and forty-four, the juſtices of the peace of the ſeveral counties in the kingdom of *England*, dominion of *Wales*, and of the town of *Berwick* upon *Tweed*, or any three or more of them, whereof one to be of the *quorum*, ſhall be, and are hereby impowered to ſet the rates and prices of all ſuch coals called *Sea Coals*, as ſhall be brought by ſea into any other rivers, creeks, havens, or ports, and ſold by retail after landed, in any other cities, boroughs, towns, counties, and places, within the kingdom of *England*, dominion of *Wales*, and town of *Berwick* upon *Tweed*, to which the ſaid recited act doth not extend, as they from time to time ſhall judge reaſonable, allowing a competent profit to the ſaid retailer, beyond the price paid by him to the importer, and the ordinary charges thereupon accruing; and that if any ingroſſer or retailer of ſuch coals ſhall refuſe to ſell as aforeſaid, that then the ſaid juſtices of the peace reſpectively are hereby authorized to appoint and impower ſuch officer or officers, or other perſons, as they ſhall think fit, to enter into any wharf, or other place, where ſuch coals are ſtored up; and in caſe of refuſal, taking a conſtable, to force entrance, and the ſaid coals to ſell, or cauſe to be ſold, at ſuch rates as the ſaid juſtices reſpectively ſhall judge reaſonable, rendering to ſuch ingroſſer or retailer the money for which the ſaid coals ſhall be ſo ſold, neceſſary charges being deducted; and if any action ſhall be commenced againſt the juſtice of peace, conſtable, or any officer or perſon, for any thing to be done in purſuance of this act, the defendant in every ſuch action may plead the general iſſue, and give the ſpecial matter in evidence; and if the verdict be found for him, or the plaintiff become non-ſuited, ſuch defendant ſhall recover and have his damages, and treble coſts of ſuit, for his unjuſt vexation in that behalf.

Three juſtices to ſet the retail price on coals in any part of *England*, &c.

allowing a competent profit to the retailers.

Power of juſtices, if the retailers refuſe to ſell as ordered.

General iſſue.

Treble coſts.

Sect. 2. "Provided always, That no perſon having intereſt in any wharf uſed for the receiving and uttering of coals, or that doth or ſhall trade by himſelf or others, in his own or any other name, in the ſale of any coals, or the engroſſing the ſame, in order to ſell the ſame, and not for his own private uſe only, ſhall act, or otherwiſe intermeddle in the ſetting the price of coals; any thing in this act to the contrary in any wiſe notwithſtanding."

No intereſted perſon to be concerned in ſetting a price on coals.

Statutes concerning the duties on coals, and for regulating the coal trade in general.

Duty on every tun of foreign coals uſually ſold by weight 3*s.* by 8 *Ann. c.* 4. *ſect.* 1.

And 2*s.* by 9 *Ann. c.* 6. *ſect.* 8.

And every chaldron of foreign coals uſually ſold by meaſure 4*s.* 6*d.* by 1 *Ann. c.* 4. *ſect.* 1.

And 3*s.* by 9 *Ann. c.* 6. *ſect.* 8.

And every chaldron of ſuch, or any other coal or culm, imported into the port of *London*, if uſually ſold by meaſure, and every tun if uſually ſold by weight, 3*s.* by *ſtat.* 1 *Geo.* 1. *ſtat.* 2. *c.* 23. *ſect.* 1.

And 3*s.* by 5 *Geo.* 1. *c.* 9. *ſect.* 1.

And every chalder of coals carried coaſtwiſe, if uſually ſold by meaſure, 3*s.* by 8 *Ann. c.* 4. *ſect.* 1.

And 2*s.* by 9 *Ann. c.* 6. *ſect.* 8.

And every tun of coal carried coaſtwiſe 2*s.* by 8 *Ann. c.* 4. *ſect.* 1.

And 1*s.* 4*d.* by 9 *Ann. c.* 6. *ſect.* 8.

And every chaldron of culm carried coaſtwiſe, if uſually ſold by weight, $7\frac{2}{10}$ of a penny, by 8 *Ann. c.* 4. *ſect.* 1.

And $4\frac{8}{10}$ of a penny, by 9 *Ann. c.* 6. *ſect.* 8.

And every chalder of pit coal-cinder carried coaſtwiſe 3*s.* by 8 *Ann. c.* 4. *ſect.* 1.

And 2*s.* by 9 *Ann. c.* 6. *ſect.* 8.

The keels at *Newcaſtle* ſhall be meaſured by the king's commiſſioners, 9 *H.* 5. *ſtat.* 1. *c.* 10. 30 *Car.* 2. *c.* 8. 6 & 7 *W.* 3. *c.* 10.

The king's claim to a duty of two pence a chaldron at *Newcaſtle.* 21 *Jac.* 1. *c.* 2. *ſect.* 5.

The liberties of the hoaſt-men of *Newcaſtle* in ſelling coals. 21 *Jac.* 1. *c.* 1. *ſect.* 12.

Exporting coals without payment of the duty, forfeits double the duty. 13 & 14 *Car.* 2. *c.* 11. *ſect.* 9.

The weight and meaſure of coals in *London.* 16 & 17 *Car.* 2. *c.* 2.—Damages, *&c.* for perſons acting under the act. *Ibid. ſect.* 4.

Juſtices of peace may ſet the price of coals in *London.* 16 & 17 *Car.* 2. *c.* 2.

A duty of 12*d.* a chaldron given to the city of *London.* 19 *Car.* 2. *c.* 3. *ſect.* 36. 22 *Car.* 2. *c.* 11. *ſect.* 38.

Boats and carts carrying coals at *Newcaſtle*, to be meaſured. 30 *Car.* 2. *c.* 8. 6 & 7 *W.* 3. *c.* 10.

A duty laid upon coals for the relief of orphans, *&c.* 5 *W.* & *M. c.* 10. *ſect.* 10. The duty continued, 21 *Geo.* 2. *c.* 29. *ſect.* 1.

A duty laid upon coals, 6 & 7 *W.* 3. *c.* 18.

Allowance of ſeamen to coal ſhips free from impreſſing, 6 & 7 *W.* 3. *c.* 18. *ſect.* 19.

An expired duty upon coals, 9 & 10 *W.* 3. *c.* 13. and upon cinders, 10 & 11 *W.* 3. *c.* 21. *ſect.* 28.

Additional duty upon coals, 8 *Ann. c.* 4. 9 *Ann. c.* 6. *ſect.* 8.

Coals carried from *Sterling* to *Dunbar* exempted, 8 *Ann. c.* 4. *ſect.* 39. 9 *Ann. c.* 6. *ſect.* 10.

Over-ſea duty of 3 *s.* by 6 *Ann. c.* 22. on coals exported in *Britiſh* ſhips, taken off, 8 *Ann. c.* 13. *ſect.* 15.

A duty impoſed upon exported coals, 9 *Ann. c.* 6. *ſect.* 5. 12 *Ann. ſt.* 2. *c.* 9. *ſect.* 9. 30 *Geo.* 2. *c.* 19. *ſect.* 28. Made perpetual by 1 *Geo.* 3. *c.* 7. and part of general fund.

Coals exported to *Ireland*, *Iſle* of *Man* or plantations excepted, 12 *Ann. ſt.* 2. *c.* 9. *s.* 9.

A duty on coals for building 50 churches, 9 *Ann. c.* 22.

Coals exported from the weſt of *Scotland* to *Ireland*, *&c.* charged with the ſame duties as coals from the weſt of *England* to *Ireland*, 9 *Ann. c.* 22. *ſect.* 90.

Combinations of coal-owners, *&c.* prohibited, 9 *Ann. c.* 28.

Regulations of the ſeveral branches of the coal-trade, 9 *Ann. c.* 28. 1 *Geo.* 1. *c.* 26. *ſect.* 1.

The contents of coal-buſhel, 12 *Ann. ſt.* 2. *c.* 17. *ſect.* 11.

Lottery annuities granted upon the coal duties, 5 *Geo.* 1. *c.* 9. *ſect.* 13. and the ſurplus to be diſpoſed of by parliament, *ſect.* 42.

The duties impoſed by 8 *Ann. c.* 4. made perpetual by 5 *Geo.* 1. *c.* 19. and part of *South-Sea* fund.

Exemption of coals carried from *Ellen-Foot* to *Bank-End*, 8 *Geo.* 1. *c.* 14. *ſect.* 14.

Application of the ſurplus of the coal duty, 13 *Geo.* 1. *c.* 21.

Dealers in coals may uſe their own lighters on the *Thames*, 3 *Geo.* 2. *c.* 26.

Dealers not to act as crimps, 3 *Geo.* 2. *c.* 26. *ſect.* 3.

Penalty on receiving premium for contracts for coals, 3 *Geo.* 2. *c.* 26. *ſect.* 4.

The forms preſcribed for contracts and notes for coals, 3 *Geo.* 2. *c.* 26. *ſect.* 6, *&c.*

Penalty on maſters of ſhips refuſing to account, 3 *Geo.* 2. *c.* 26. *ſect.* 9.

On lighter-men, *&c.* delivering coals without the ingrain, 3 *Geo.* 2. *c.* 26. *ſect.* 10.

Sacks and other coal meaſures to be marked, 3 *Geo.* 2. *c.* 26. *ſect.* 11.

Penalty on maſters of coal-ſhips keeping turn, 4 *Geo.* 2. *c.* 30.

Maſters of colliers to declare their cocquets in four days, 4 *Geo.* 2. *c.* 30. *ſect.* 2.

All coal contracts at *Billingsgate* to be ſigned and produced, 11 *Geo.* 2. *c.* 15. *ſect.* 6.

Waggons at *Newcaſtle*, *&c.* to be meaſured and marked, 11 *Geo.* 2. *c.* 15. *ſect.* 8.

A drawback of the duty on coals uſed in fire-engines for draining the tin and copper-mines in *Cornwall*, 14 *Geo.* 2. *c.* 41. *ſect.* 3.

Land coal-meter's office for *Weſtminſter* erected, 19 *Geo.* 2. *c.* 35. 20 *Geo.* 2. *c.* 49. Penalty on coal-meters not attending, 23 *Geo.* 2. 26. *ſ.* 4.

Penalty on ſhips exporting coals entered coaſtwiſe, 22 *Geo.* 2. *c.* 37. *ſect.* 3.

Ships having exported coals, not to be cleared out till the duty paid, 22 *Geo.* 2. *c.* 37.

Penalty on principal land coal-meters neglecting to ſtation labouring coal-meters, as directed by 19 *Geo.* 2. *c.* 35. 23 *Geo.* 2. *c.* 26. *ſect.* 4.

Additional duty on coals exported, 30 *Geo.* 2. *c.* 19. *ſect.* 28.

Culm may be exported for fifteen years to *Liſbon*, 31 *Geo.* 2. *c.* 15. *ſect.*

Puniſhment of delivering coals fraudulently, 32 *Geo.* 2. *c.* 27.

Culm how to be exported from *Milford*, 33 *Geo.* 2. *c.* 15.

Coin.

COIN, (coin, in *French)* ſays lord *Coke*, ſignifies a corner, and from thence hath its name; becauſe in ancient time money was ſquare with corners, as it is in ſome countries at this day. *Co. Lit.* 107. *b.*

The legitimation of money, and the giving it its denominated value, is juſtly reckoned *inter jura majeſtatis*, and in *England* it is one ſpecial part of the king's prerogative. 1 *Hale's H. P. C.* 188.

And the king may by his proclamation legitimate foreign coin, and make it current money of this kingdom, according to the value impoſed by ſuch proclamation. 1 *Hale's Hiſt. P. C.* 192. And therefore both *Engliſh* money, coined by the king's authority, and foreign coin made current by proclamation, are within the denomination of lawful money of *England*. *P. Co. Lit.* 207.

And no perſon can be inforced to take in payment any money but of lawful metal, that is, of ſilver or gold. 2. *Inſt.* 577. Except for ſums under ſix-pence. 1 *Hale's Hiſt.* 195.

By Stat. 25 *Ed.* 3. *ſt.* 5. *c.* 2. [*A. D.* 1350] "If a man counterfeit the king's money, and if a man bring falſe money into this realm, counterfeit to the money of *England*, as the money called *Luſhburgh*, or other like to the ſaid money of *England*, knowing the money to be falſe, to merchandize or make payment, in deceit of the king and his people, he ſhall be guilty of high treaſon."

If a man counterfeit the king's money] It is ſaid, that thoſe who coin money without the king's authority, are guilty of high treaſon within this act, whether they utter it or not; and that thoſe who have the king's authority to coin money are guilty of high treaſon if they make it of baſer alloy than they ought; and that thoſe alſo are guilty of the ſame crime, who receive

and

and comfort one who is known by them to be guilty thereof; but that clippers, *&c.* are not within this ſtatute. 1 *Hawk. P. C.* 42.

But it ſeems that thoſe who barely utter falſe money made within the realm, knowing it to be falſe, are neither guilty of high treaſon, nor of a miſpriſion thereof, but only of a high miſpriſion: Yet by 8 & 9 *Will.* 3. *c.* 26. they are in ſome caſes made guilty of felony. 1 *Hawk.* 42.

Such money only as is coined by the king's authority, either in gold or ſilver within the realm, and conſequently not braſs farthings, *&c.* ſhall come under this denomination. 1 *Hawk.* 42.

But the miſchiefs intended to be remedied by this ſtatute, having been found by experience not to have been ſufficiently redreſſed by it as thus reſtrained, the ſame have been farther provided for by ſubſequent ſtatutes. 1 *Hawk.* 42.

Stat. 1 *Mar. Seſſ.* 2. *c.* 6. [*A. D.* 1553. *Intituled*] "An act that the counterfeiting of ſtrange coins being current within this realm, the queen's highneſs ſign manual, ſignet or privy ſeal, to be adjudged treaſon."

"Foraſmuch as by the laws of this realm, ſmall and no due and condign puniſhment is at this preſent time provided for ſuch evil diſpoſed perſons as ſhall counterfeit or forge ſuch kind of gold or ſilver of other realms, as is not the proper coin of this realm, yet permitted and ſuffered by the queen our ſovereign lady's conſent, and heretofore hath been permitted and ſuffered by the conſent of her moſt noble progenitors, to be currant in payment within this her realm, nor for ſuch perſons as ſhall counterfeit the queen's highneſs ſign manual, or privy ſignet, or privy ſeal; by reaſon whereof divers evil diſpoſed perſons are encouraged and boldned daily to perpetrate and commit the ſaid ſeveral offences:

Treaſon to forge the coin of other realms currant in this realm, or the king's ſign manual, *&c.* 25 Ed. 3. *ſtat.* 5. c. 13.

Sect. 2. "For remedy whereof, Be it enacted by our ſovereign lady the queen, the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons hereafter falſly forge and counterfeit any ſuch kind of coin of gold or ſilver, as is not the proper coin of this realm, and is or ſhall be currant within this realm by the conſent of the queen, her heirs or ſucceſſors: (2) Or if any perſon or perſons at any time hereafter do falſly forge or counterfeit the queen's ſign manual, privy ſignet, or privy ſeal; (3) that then every offence ſhall be deemed and judged high treaſon. (4) And the offenders therein, their counſellors, procurers, aiders and abettors, being convict according to the laws of this realm of any of the ſaid offences, ſhall be likewiſe deemed and adjudged traitors againſt the queen, her heirs and ſucceſſors, and the realm, and ſhall ſuffer and have ſuch pains of death, forfeiture of lands, goods and cattels, and alſo loſe the privilege of all ſanctuary, as in the caſe of high treaſon is uſed and ordained."

Stat. 1 & 2 *Phil. & Ma. c.* 11. [*A. D.* 1554. *Intituled*] "An act for the puniſhment of the bringing in of the counterfeit coins of foreign realms, being current within this realm."

Bringers in of counterfeit coin into this realm, ſhall be puniſhed as traytors.

" Where divers and ſundry coins of gold and ſilver of other realms, not being of the proper coin of this realm of *England*, and yet by the ſufferance and conſent of the king and queen our ſovereign lord and lady, be current in payment within this realm, many ill-diſpoſed perſons, for their own corrupt lucre and advantage, have now of late brought into this realm, from the parts beyond the ſea, great quantity of forged and counterfeit money, like to the ſaid coin of other foreign realms, and have uttered the ſame here, by merchandizing and otherwiſe, to divers of the ſubjects of this realm, to their great deceit, hurt and damage; (2) becauſe the ſaid ill diſpoſed perſons have perceived and underſtood, that there was not, nor yet is any ſufficient law or ſtatute made or provided for the condign puniſhment of the offenders in that behalf:

Sect. 2. " Wherefore be it enacted and eſtabliſhed by the authority of this preſent parliament, That if any perſon or perſons, after the twentieth day of *January* next coming, ſhall bring from the parts of beyond the ſea, into this realm, or into any of the dominions of the ſame, and ſuch falſe and counterfeit coin of money, being current within this realm, as is aforeſaid, knowing the ſame coin or money to be falſe and counterfeit, to the intent to utter or make payment with the ſame within this realm, or any the dominions of the ſame, by merchandizing or otherwiſe; That all and every ſuch perſon or perſons ſo offending as is aforeſaid, their counſellors, procurers, aiders and abettors in that behalf, ſhall be deemed and adjudged to be offenders in high treaſon, and ſhall ſuffer, after lawful conviction or attainder thereof, ſuch pains of death, loſs and forfeiture of lands, goods and cattels, as other offenders ſhall do in caſes of high treaſon.

The manner of indictment, trial, &c. of an offender for impairing or forging of coin.

Sect. 3. " And be it further enacted by the authority aforeſaid, That all and every perſon or perſons, that ſhall at any time after the ſaid twentieth day of *January* be accuſed or impeached of any of the offences contained and provided for in this eſtatute, or of any other offence or offences concerning the impairing, counterfeiting or forging of any coin current within this realm, ſhall and may be indicted, arraigned, tried, convicted or attainted by ſuch like evidence, and in ſuch manner and form as hath been uſed and accuſtomed within this realm, at any time before the firſt year of the reign of our late ſovereign lord, king *Edward* the ſixth; any ſtatute, cuſtom, law or uſage to the contrary thereof in any wiſe notwithſtanding. 9 *Ed.* 3. *ſtat.* 2. *c.* 2."

Stat. 5 *Eliz. c.* 11. [*A. D.* 1562. *intituled*] " An act againſt the clipping, waſhing, rounding, and filing of coins."

The clipping, &c. of coins for gain's ſake, ſhall be high treaſon. 3 H. 5. c. 6. 1 Mar. ſeſſ. 1. c. 1. The pre-

" Whereas the offences of clipping, rounding, waſhing and filing of money or coins of this realm, was declared by an act of parliament in the time of king *Henry* the fifth, to be treaſon to the king and the realm, and according to the ſaid act, the ſame offences were and did continue treaſon until the firſt year of the reign of queen *Mary*; at which time the pains and penalties due for the ſaid offences, were abrogated and taken away by the gene-

ral

neral act of repeal then made; (2) By reason whereof, divers false and evil-disposed persons, perceiving themselves to be loose and free from the severity and danger of the said law and penalty, have been of late the more hardy and bold, to attempt and practise, for wicked lucre and gain's sake, to diminish, impair, and falsify the monies and coins current within this realm, and the dominions of the same, by such clipping, washing, rounding and filing thereof, not only to the great dishonour of the queen's majesty our sovereign lady that now is, by whose great goodness new monies or coins of the same are now reduced to as much fineness as ever hath been in any time of her noble progenitors, but also to the great loss and damage of the good subjects of this realm, and more is like to be hereafter, if the same is not speedily met withal:

Judices redounding to the queen, and the realm, by clipping, washing, &c. of money. 3 Inst. 17.

Sect. 2. "For remedy whereof, Be it enacted, declared and established by the authority of this present parliament, That from and after the first day of *May* next coming, clipping, washing, rounding, or filing for wicked lucre or gain's sake, of any the proper monies or coins of this realm, or the dominions thereof, or of the monies or coins of any other realm, allowed and suffered to be current within this realm, or the dominions thereof, at this present, or that hereafter at any time shall be the lawful monies or coins of this realm or of the dominions thereof, or of any other realm, and by proclamation allowed and suffered to be current here, by the queen's majesty, her heirs and successors, shall be taken, deemed, and adjudged by virtue of this act to be treason; (2) and the offenders therein, their counsellers, consenters and aiders, shall be, from and after the same first day of *May*, taken, deemed and adjudged as offenders in treason, and being thereof lawfully convicted or attainted, according to the due order and course of the laws of this realm, shall suffer pains of death, and lose and forfeit all his and their goods and chattels; (3) and also shall lose and forfeit all his and their lands and tenements, during his and their natural life or lives only."

The clipping, washing, rounding, or filing of current money, shall be adjudged treason. Inforced by 18 El. c. 1.

Dyer 230.

Sect. 3. "And be it further enacted by the authority aforesaid, That all and every person and persons which have any lawful grant to have and enjoy the forfeiture of lands, tenements, goods or chattels of offenders, and men attainted in high treason, within any manor, lordship, town, parish, hundred, or other precinct within this realm of *England* or *Wales*, shall and may at all times hereafter have like liberty to take, seize and enjoy all such forfeitures of lands, tenements, goods and chattels, as shall come to grow within their liberties, by force of the attainder of any person or persons, for and upon any offence or offences made treason by this act, as they or any of them should, ought, or might have by virtue of any good and lawful grant to them or any of them heretofore had or made.

They who have forfeitures of lands or goods by grant, shall in this case enjoy them.

Sect. 4. "Provided always, and be it enacted by the authority aforesaid, That this act, nor any thing therein contained, nor any attainder or attainders of any person or persons, for any offence or offences made treason by this act, shall in any wise extend or be judged, interpreted or expounded, to make any corruption of blood, to any the heir or heirs of any such offender or offenders, or to make the wife of any such offender to lose or forfeit her dower, of or in any lands, tenements or hereditaments, or other

These offences make no corruption of blood or forfeiture of dower.

title, action or intereſt in the ſame; any thing in this act contained, or any attainder or attainders hereafter to be had for any offence or offences made treaſon by this act, to the contrary notwithſtanding."

Trial of a peer by peers.

Sect. 5. "And be it further enacted by the authority aforeſaid, That if any of the lords of the parliament, or peer of this realm for the time being, ſhall fortune at any time hereafter to be indicted of any offence made treaſon by this act; that then they and every of them ſhall have his or their trial by their peers, as hath been uſed heretofore in caſes of high treaſon."

Stat. 14 *Eliz. c.* 3. [*A. D.* 1572. *intituled*] "An act againſt the forging and counterfeiting of foreign coin being not current within this realm."

It is miſpriſion of high treaſon to forge money, which is not the coin of this realm, nor current therein. 3 inſt. 17.

Foraſmuch as by the laws or ſtatutes of this realm, ſmall or no condign puniſhment is at this time provided for ſuch evil-diſpoſed perſons as ſhall counterfeit or forge ſuch kind of gold or ſilver of other realms, as is not the proper coin of this realm, nor current in payment within this realm; by reaſon whereof divers evil-diſpoſed perſons as well without this realm as within, are encouraged and emboldned daily to counterfeit or forge ſuch kind of gold and ſilver, and utter the ſame in this realm, in great deceit of her majeſty's ſubjects: (2) Be it enacted by our ſaid ſovereign lady the queen, the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons hereafter falſly forge or counterfeit any ſuch kind of coin of gold or ſilver, as is not the proper coin of this realm, nor permitted to be current within this realm; that then every ſuch offence ſhall be deemed and judged miſpriſion of high treaſon; (3) and the offenders therein, their procurers, aiders and abetters, being convict according to the laws of this realm of ſuch offences, ſhall be impriſoned, and forfeit ſuch lands, goods and chattels, as in caſes of miſpriſion of treaſon for concealment of high treaſon."

The penalty of forging of coin which is not the money of this realm, nor current therein.

Stat. 18 *Eliz. c.* 1. [*A. D.* 1576. *Intituled*] "An act againſt the diminiſhing and impairing of the queen's majeſty's coin, and other coins current within this realm."

Diminiſhing, ſcaling, or lightning of any coin current within this realm, ſhall be high treaſon. 5 El. c. 11. 3 inſt. 17.

"Whereas the offences of clipping, rounding, waſhing and filing, for wicked lucre or gains-ſake, of any the proper monies or coins of this realm, or the dominions thereof, or of the monies or coins of any other realm, allowed by proclamation, and ſuffered to be current within this realm, or the dominions thereof, by a ſtatute made in the fifth year of the queen's majeſty's reign, are taken, deemed, and adjudged to be treaſon; (2) and the offenders therein, the counſellors, conſenters and aiders likewiſe deemed and adjudged as offenders in treaſon, and being thereof lawfully convicted or attainted, according to the due order and courſe of the laws of this realm, are to ſuffer pains of death, and to loſe and forfeit all his and their goods and chattels, and alſo all his and their lands and tenements,

ments, during his and their natural life or lives only, as by the ſaid eſtatute thereof made, among other things therein contained, more at large it doth and may appear: (3) Sithence the making of which good law and ſtatute, divers falſe and evil-diſpoſed perſons, knowing that the ſaid law, being, as it is, penal, ought to be taken and expounded ſtrictly according to the words thereof, and the like offences, not by an equity to receive the puniſhment or pains, have ſithence the making of the ſaid law and ſtatute, moſt wickedly deviſed and practiſed, for wicked lucre and gains-ſake, other arts, undue ways and means, to falſify, impair, diminiſh, and lighten, as well the proper monies and coins of other realms allowed and ſuffered to be current within this realm and the dominions there of by her majeſty's proclamation, to the great damage, loſs, hurt and deceit, as well of her majeſty, as of all her faithful and loving ſubjects, and more is like hereafter to be practiſed and done, if the ſame be not ſpeedily met withal; (4) For reformation and remedy whereof, be it enacted, declared, and eſtabliſhed by authority of this preſent parliament, That if any perſon or perſons, of what eſtate, degree, or condition ſoever he or they be, ſhall from and after the firſt day of *April* next coming, for wicked lucre or gains-ſake, by any art, ways or means whatſoever, impair, diminiſh, falſify, ſcale, or lighten the proper monies or coins of this realm, or any the dominions thereof, or the monies or coins of this realm allowed and ſuffered to be current at the time of the offence committed within this realm of *England*, or any the dominions of the ſame, by the proclamation of the queen's majeſty, her heirs or ſucceſſors, ſhall be taken, adjudged, and deemed to be treaſon; (5) and the offenders therein, their counſellers, conſenters, aiders, ſhall be likewiſe deemed and adjudged as offenders in treaſon, and being thereof lawfully convicted or attainted, according to the due order of the laws of this realm, ſhall ſuffer pains of death; (6) and loſe and forfeit all their goods and chattels to the queen's majeſty, her heirs and ſucceſſors, and ſhall alſo loſe and forfeit to the queen's highneſs, her heirs and ſucceſſors, all their lands, tenements, and hereditaments, during his or their natural life or lives only.

Other undue means practiſed to falſify the money, not within the ſtrict word of the foreſaid ſtatute.

Sect. 2. "Provided always, and be it enacted by the authority aforeſaid, That this act, nor any thing therein contained, nor any attainder or attainders of any perſon or perſons for any offence or offences made treaſon by this act, ſhall in any wiſe extend, or be judged, interpreted, or expounded to make any corruption of blood to any the heir or heirs of any ſuch offender or offenders, or to make the wife of any ſuch offender to loſe or forfeit her dower, of or in any lands, tenements, or hereditaments, or her title, action, or intereſt to the ſame; any thing in this act contained, or any attainder or attainders hereafter to be had, for any offence or offences made treaſon by this act, to the contrary notwithſtanding.

No corruption of blood or forfeiture of dower for this treaſon.

Sect. 3. "And be it further enacted by the authority aforeſaid, That if any the lords of the parliament, or peer of this realm, for the time being, ſhall fortune at any time hereafter to be indicted of any offence made treaſon by this act, that then they and every of them ſhall have his or their

Trial of a peer by his peers.

their trial by their peers, as hath been uſed heretofore in caſes of high treaſon. 25 *Ed.* 3. *ſtat.* 4 & 5 *c.* 2. 1 *Ma. Seſſ.* 2. *c.* 6.

Stat. 6 & 7 *Will.* 3. *c.* 17. [*A. D.* 1695. *Intituled*] "An act to prevent counterfeiting and clipping the coin of this kingdom."

"Whereas it is manifeſt that of late years the current coin of this kingdom hath been greatly diminiſhed by clipping, rounding filing, and melting the ſame, and likewiſe many falſe and counterfeit coins have been clipped for the better diſguiſing thereof: And for as much as it is apparent that theſe practices of diminiſhing the current coin is very much occaſioned by thoſe who drive a trade of exchanging broad money for clipped money, and by other arts and devices:

Penalty upon perſon ſelling or paying ſilver money for more than it is coined.

Sect. 2. "Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in parliament aſſembled, and by the authority of the ſame, That from and after the firſt day of *May*, which ſhall be in the year of our lord one thouſand ſix hundred ninety-five, if any perſon or perſons whatſoever ſhall, at any one time or payment, exchange, ſend, ſell, borrow, or buy, receive, or pay, any broad ſilver money, or ſilver money unclipped, of the coin of this kingdom, for more in tale, benefit, profit or advantage, than the ſame was coined for and ought by law to go for, be lent, ſold for, borrowed or bought, received or paid, ſhall forfeit the ſum of ten pounds for every twenty ſhillings that ſhall be ſo exchanged, lent ſold for, borrowed or bought, received or paid, and ſo in proportion for any greater or leſſer ſum; one moiety thereof to his majeſty, and the other moiety to the perſon who ſhall ſue or inform for the ſame, to be recovered (with coſts of ſuit) by action of debt, bill, plaint or information, wherein no privilege, protection, or wager of law ſhall be allowed, nor any more than one imparlance."

Penalty for caſting bars of ſilver, or ſtamping them like Spaniſh money.

Sect. 3. "And be it further enacted by the authority aforeſaid, That no perſon do or ſhall preſume to caſt ingots or bars of ſilver, in imitation of *Spaniſh* bars or ingots of ſilver, nor do ſtamp any mark or impreſſion upon any ingot or bar in likeneſs of the *Spaniſh* marks or impreſſions; upon pain that the perſon herein offending ſhall for every ſuch offence forfeit the ſilver ſo caſt, and alſo the ſum of five hundred pounds; one moiety to his majeſty, and the other to the informer, to be recovered as aforeſaid."

Puniſhment for buying or ſelling clippings, &c.

Sect. 4. "And for the better preventing the clipping, diminiſhing, or impairing the current coin of this kingdom, be it further enacted by the authority aforeſaid, That if any perſon whatſoever ſhall buy or ſell, and knowingly have in his cuſtody or poſſeſſion, any clippings or filings of the current coin of this kingdom, he ſhall for every ſuch offence forfeit the ſaid clippings or filings, and alſo the ſum of five hundred pounds; one moiety to his majeſty, and the other to the informer, to be recovered as aforeſaid, and ſhall be alſo branded in the right cheek with a hot iron with the letter *R.* and until payment of the ſaid five hundred pounds ſhall ſuffer impriſonment."

Sect. 5.

Sect. 5. "And be it further enacted, That no goldſmith, or other perſon whatſoever ſhall, from and after the ſaid firſt day of *May*, tranſport or cauſe to be tranſported, out of this kingdom of *England* into any parts beyond the ſeas, any molten ſilver whatſoever, but ſuch only as ſhall be marked or ſtamped at *Goldſmiths-hall* by the wardens, ſome or one of them, belonging to the ſaid company of goldſmiths, which mark or ſtamp the ſaid wardens are hereby required to provide, and therewith to mark or ſtamp all ſuch ſilver as ſhall be proved before them, or one of them, in ſuch manner as is hereafter mentioned, to be lawful ſilver; nor unleſs a certificate be firſt had and obtained under the hand of one or more of the ſaid wardens, of oath having been made before him or them by the owner or owners of ſuch molten ſilver, and likewiſe by one credible witneſs, that the ſame is lawful ſilver, and that no part thereof was (before the ſame was molten) the current coin of this realm, nor clippings thereof, nor plate wrought within this kingdom; which oath the ſaid wardens, or any one of them, are and is hereby required and authorized to adminiſter, and likewiſe to make and grant a certificate thereof without fee or reward, an entry of which certificate ſhall be duly made, by the ſaid wardens, in a book to be kept for that purpoſe; and in caſe any perſon whatſoever, who ſhall offer any molten ſilver to be marked, as is aforeſaid, ſhall not prove by his or her oath, and likewiſe by the oath of one credible witneſs, that the ſilver offered to be marked is lawful ſilver, and that the ſame was not, before the melting thereof, the current coin of this kingdom, nor clippings thereof, nor plate wrought within the ſame, then and in every ſuch caſe it ſhall be lawful to and for the ſaid wardens, or any one of them, to ſeize and detain ſuch molten ſilver ſo offered to be marked, until ſuch time as ſuch oath and proof ſhall be made, as is aforeſaid.

No perſon ſhall tranſport bullion, except it be ſtamped at *Goldſmiths-hall*.

Sect. 6. "And be it further enacted, That if any perſon whatſoever ſhall ſhip, or cauſe to be ſhipped or put on board any veſſel, any molten ſilver not ſtamped or marked by the ſaid wardens, or one of them, and without certificate firſt obtained, of oath having been made before the ſaid wardens, or one of them, of the lawfulneſs of ſuch ſilver, in manner as is aforeſaid (which certificate ſhall be ſhewn to ſome one of the commiſſioners of the cuſtoms, for the time being, before any cocket be granted for the exporting ſuch molten ſilver) in ſuch caſe it ſhall and may be lawful to and for any officer or officers of his majeſty's cuſtoms to ſeize ſuch ſilver ſo ſhipped and put on board; one moiety whereof ſhall be to his majeſty, his heirs and ſucceſſors, and the other moiety to the officer and officers ſo ſeizing the ſame.

Bullion not ſtamped may be ſeized by cuſtomhouſe officers.

Sect. 7. "And be it further enacted, That if any broker or brokers, not being a trading goldſmith or refiner of ſilver, ſhall buy or ſell any bullion or molten ſilver, every ſuch perſon ſhall ſuffer, for every ſuch offence, impriſonment for ſix months without bail or mainprize.

Goldſmiths only to buy and ſell bullion.

Sect. 8. "And for the better diſcovery of offenders in the premiſſes, be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for one or more of the wardens of the ſaid company of goldſmiths, with any two or more of the court of aſſiſtants of the ſaid company,

What perſons may break open houſes, and ſearch for bullion.

company, within the compaſs of the weekly bills of mortality, and to and for any two juſtices of the peace within any county, city, or town corporate, out of the compaſs of the weekly bills of mortality, to enter into the houſe, room or workſhop of any perſon who ſhall be ſuſpected to be guilty of buying or ſelling unlawful bullion, and to ſearch for the ſame; and in caſe the occupier or occupiers of ſuch houſe, room or workſhop ſhall refuſe to permit the ſaid warden and aſſiſtants or juſtices to make ſuch ſearch, as aforeſaid, it ſhall and may be lawful to ſuch warden and aſſiſtants, and juſtices, with the aſſiſtance of a conſtable, to break open any door, box, trunk, cheſt, cupboard or cabinet in order to ſearch for and diſcover ſuch bullion, as is aforeſaid; and in caſe the perſons ſo ſearching ſhall at any time find any ſuch unlawful bullion, the perſons ſo finding the ſame are hereby required to ſeize, as well ſuch bullion as the perſon and perſons in whoſe poſſeſſion the ſame ſhall be found; and the ſaid wardens, aſſiſtants and conſtables, ſhall bring him and her before the next juſtice of the peace, who upon oath made of ſuch finding (which juſtice within the weekly bills of mortality, and the ſaid two juſtices without the ſaid bills of mortality, are to adminiſter) ſhall and may examine the perſon ſo brought before him, or found by them, reſpectively, upon oath, whether the bullion ſo found be lawful ſilver, and whether the ſame was not (before the melting thereof) the current coin of this realm, or clippings thereof; and in caſe the ſaid perſon ſo examined ſhall not prove by his or her oath, or by the oath of one credible witneſs before the ſaid juſtice and juſtices reſpectively, that the bullion ſo found is lawful ſilver, and that the ſame was not, before the melting thereof, the current coin of this realm, nor clippings thereof, then and in ſuch caſe the ſaid juſtice or juſtices reſpectively ſhall commit the perſon ſo examined to priſon, and ſhall ſecure the bullion ſo found, and ſhall likewiſe oblige the perſons that can give any evidence concerning the ſame, to enter into a recognizance to proſecute the ſaid offender and offenders; and in caſe ſuch offender and offenders, in whoſe poſſeſſion ſuch unlawful bullion ſhall be found, ſhall not, upon his, her, or their trials on an indictment for melting the current ſilver coin of this realm, prove, by the oath of one credible witneſs at the leaſt, the bullion ſo found to be lawful ſilver, and that the ſame was not the current coin of this realm, nor clippings thereof, then and for want of ſuch proof, ſuch offender ſhall be found guilty of the offence contained in ſuch indictment, and ſhall ſuffer impriſonment for the ſpace of ſix months, without bail or mainprize.

Perſon, in whoſe poſſeſſion bullion is found, not proving it to be neither coin, nor clippings melted, to be impriſoned ſix months.

Sect. 9. "And whereas the coin of this realm is of late much clipped and counterfeited for want of due encouragement to be given to ſuch perſons as ſhall diſcover the ſame; Be it enacted by the authority aforeſaid, That, from and after the ſaid firſt day of *May* one thouſand ſix hundred ninety-five, all and every perſon and perſons, who ſhall apprehend and take any perſon or perſons, who have counterfeited any of the current coin of this realm, or that for lucre or gain have clipped, waſhed, filed, or any ways diminiſhed the ſame, or ſhall bring, or cauſe to

Perſons apprehending and convicting clippers, &c. ſhall, upon the judge's certificate, receive 40*l.* of the ſheriff.

be brought, into this kingdom, the dominion of *Wales*, or town of *Berwick* upon *Tweed*, any clipt, falſe, or counterfeit coin, and proſecute ſuch perſon or perſons, until he, ſhe or they be convicted for any ſuch offence, ſhall have and receive from the ſheriff or ſheriffs of the county, where ſuch conviction ſhall be made, for every ſuch offender ſo convicted, the ſum of forty pounds (without paying any fee for the ſame) within one month after ſuch conviction and demand thereof made, by tendring a certificate to the ſaid ſheriff or ſheriffs for the time being, under the hand or hands of the judge or juſtices before whom ſuch traitor or traitors, offender or offenders, as aforeſaid, ſhall be convicted, certifying the conviction of ſuch traitor or traitors done within the county of the ſaid ſheriff or ſheriffs; and that ſuch traitor or traitors was or were taken and proſecuted by the perſon or perſons claiming the ſaid reward, which certificates, as aforeſaid, the judge or juſtices are hereby required to give: And in caſe any diſpute ſhall happen to ariſe between the perſons apprehending and proſecuting to conviction ſuch traitors, as aforeſaid, touching their right and title to the ſaid reward, that then the ſaid judge or juſtices ſo reſpectively certifying, as aforeſaid, ſhall in and by their ſaid certificate direct and appoint the ſaid reward to be paid unto and amongſt the parties claiming the ſame, in ſuch ſhare and proportions as to the ſaid judge or juſtices ſhall ſeem juſt and reaſonable: And if default of payment of the ſaid ſum or ſums of money ſhall happen to be made by any ſheriff or ſheriffs, ſuch ſheriff or ſheriffs ſo making default, ſhall forfeit to the perſon or perſons, to whom ſuch money is due, as aforeſaid, double the ſum or ſums of money he ought to have paid, to be recovered by him or them, or his or their executors or adminiſtrators, in any of his majeſty's courts of record at *Weſtminſter*, by action of debt, bill, plaint or information, wherein but one imparlance, and no eſſoin, protection, or wager of law, ſhall be allowed, with treble coſts of ſuit by him or them expended in recovery of the ſame.

Sheriff not paying ſhall forfeit double to the apprehenders.

Sect. 10. "And it is hereby further enacted, That all ſheriffs, their executors, or adminiſtrators, upon producing ſuch reſpective certificates, and the receipts for the money by them paid in purſuance of this act, ſhall be allowed, and are hereby impowered to deduct, upon their accounting with his majeſty, all monies (other than the double ſum and ſums of money and coſts of ſuit) which they ſhall diſburſe, as aforeſaid, without any fee or reward whatſoever.

Sheriff to be allowed the 40 *l.* in his accounts, and if not ſufficient in his hands, to be repaid by the treaſury.

Sect. 11. "Provided always, That if, upon the account of any ſheriff or ſheriffs, there ſhall not be money ſufficient in the hands of ſuch ſheriff or ſheriffs to reimburſe him or them ſuch monies paid by him or them by virtue of this act, that then the ſheriff or ſheriffs, having ſo paid the ſaid monies, ſhall have the ſame repaid by the lord treaſurer or commiſſioners of his majeſty's treaſury for the time being, out of the revenue of the crown, upon certificate from the clerk of the Pipe to that effect.

By 3 *Geo.* 1. *c.* 15. *ſ.* 4. the ſheriff may apply to the lord treaſurer.

Perſon guilty, on convicting two others pardoned.

Sect. 11. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons, being out of priſon, ſhall, from and after the ſaid firſt day of *May* one thouſand ſix hundred ninety-five, be guilty of clipping, coining, counterfeiting, waſhing, filing or otherwiſe diminiſhing the coin of this realm, and afterwards diſcover two or more perſon or perſons, who already have or hereafter ſhall commit any of the ſaid crimes, ſo as two or more of the perſon or perſons diſcovered ſhall be convicted of the ſame, any ſuch diſcoverer ſhall himſelf have, and is hereby intitled to, the gracious pardon of his majeſty, his heirs, and ſucceſſors, for all ſuch his crimes which he or they have committed at any time or times before ſuch diſcovery made: And if the perſon making ſuch diſcovery be an apprentice, he ſhall be deemed and taken, and is hereby declared a freeman, and ſhall have, and may exerciſe any lawful trade, profeſſion, or myſtery, with all liberties and privileges, and in as full and ample manner, as if the ſaid perſon had ſerved the full time of his apprenticeſhip; any law or ſtatute, cuſtom or ordinance to the contrary notwithſtanding."

Apprentice diſcovering, made a freeman.

Proof of foreign bullion to lie upon the owner, &c.

Sect. 13. "And be it further enacted by the authority aforeſaid, That in caſe any ſeiſure ſhall happen of any bullion ſhipped to be exported, and a doubt ariſe thereon, whether the ſame be *Engliſh* or foreign bullion, that then the proof ſhall lie upon the owner, claimer or exporter of ſuch bullion, that the ſame is foreign bullion, and had not been melted down in this realm of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*."

Penalty upon exporter not entring in name of owner, &c.

Sect. 14. "And be it further enacted by the authority aforeſaid, That in caſe any perſon or perſons enter or ſhip any bullion, allowed by this act to be exported beyond the ſeas, other than in the name of the true owner and proprietor or importer, the exporter thereof ſhall forfeit the ſame, or the full value thereof; one moiety to his majeſty, his heirs and ſucceſſors, and the other moiety to the perſon who ſhall ſeize or diſcover the ſame."

Certain quantity of bullion exported by the king ſaved.

Sect. 15. "Provided always, and be it further enacted, That this act, or any thing therein contained, ſhall not extend to prohibit the exportation of ſuch bullion as ſhall be licenſed by his majeſty (ſuch licences being entered in the books of the cuſtom-houſe for the port of *London*) ſo as the ſame be exported before the firſt day of *January* one thouſand ſix hundred ninety-five, and do not exceed ſeven hundred thouſand ounces of ſilver to be applied for the payment of his majeſty's forces."

Stat. 7 & 8 *Will.* 3. *c.* 19. [*A. D.* 1696.] *made among other purpoſes,* "for remedying the ill ſtate of the coin of the kingdom."

All coining preſſes not brought into the mint to be ſeized.

Sect. 4. "And foraſmuch as the greateſt ſecurity againſt counterfeiting the new intended coin of this realm by the mill and preſs, is the difficulty of being provided with fit tools and inſtruments for doing thereof; Be it enacted by the authority aforeſaid, That if any perſon or perſons whatſoever (other than the officer or officers of his majeſty's mint or mints) now having, or which at any time hereafter, before the firſt day of *March*, which ſhall be in the year of our lord one thouſand ſix hundred ninety-five, ſhall have in his cuſtody or poſſeſſion any preſs or preſſes which may be made uſe of for coinage, if ſuch perſon or perſons do or ſhall, on or before the third

third day of *May*, which ſhall be in the year of our lord one thouſand ſix hundred ninety-ſix, bring and deliver the ſame to the officer or officers of his majeſty's mint at the tower of *London*, every ſuch perſon ſhall, at the time of the delivery thereof, receive from the ſaid officer or officers at the mint the full value which ſuch preſs or preſſes firſt coſt, and the charge of carriage; and if at any time after the ſaid third day of *May*, any preſs for coinage ſhall be found in the cuſtody of any perſon whatſoever (other than the officers of his majeſty's mint or mints) ſuch preſs ſhall be ſeized for his majeſty's uſe; and every perſon, in whoſe cuſtody ſuch preſs ſhall be ſo found after the ſaid third day of *May*, ſhall forfeit the ſum of five hundred pounds; the one moiety thereof to be to his majeſty, and the other moiety thereof to the informer, to be recovered by action of debt, bill plaint, or information, in any of his majeſty's courts wherein no eſſoign, protection, wager of law, or imparlance, ſhall be allowed." Penalty.

Stat. 8 & 9 *Will.* 3. *c.* 26. [*A. D.* 1697. *Intituled*] "An act for the better preventing the counterfeiting the current coin of this kingdom."

"Whereas, notwithſtanding the good laws ſtill in force againſt the counterfeiting of the monies and coins of this realm, yet the ſaid offence doth and is like daily to increaſe, to the manifeſt wrong and injury both of his majeſty and all his loving ſubjects, being very much occaſioned for want of a due and condign puniſhment to be inflicted upon ſuch artificers and others, who without any lawful authority do make or uſe puncheons, ſtamps, dyes, and other engines and inſtruments, which are commonly uſed, or may be made uſe of, in or about the coining of money: for redreſs of which ſo great and growing a miſchief, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the fifteenth day of *May* one thouſand ſix hundred ninety-ſeven, no ſmith, engraver, founder, or other perſon or perſons whatſoever (other than and except the perſons imployed, or to be imployed, in or for his majeſty's mint or mints in the tower of *London*, or elſewhere, and for the uſe and ſervice of the ſaid mints only, or perſons lawfully authorized by the lords commiſſioners of the treaſury, or lord high treaſurer of *England*, for the time being) ſhall knowingly make or mend, or begin or proceed to make or mend, or aſſiſt in the making or mending of any puncheon, counter puncheon, matrix, ſtamp, dye, pattern, or mould of ſteel, iron, ſilver, or other metal or metals, or of ſpaud, or fine founders earth, or ſand, or of any other materials whatſoever, in or upon which there ſhall be, or be made or impreſſed, or which will make or impreſs, the figure, ſtamp, reſemblance, or ſimilitude of both or either of the ſides or flats of any gold or ſilver coin, current within this kingdom, nor ſhall knowingly make or mend, or begin or proceed to make or mend, or aſſiſt in the making or mending of any edger or edging tool, inſtrument, or engine, not of common uſe in any trade, but contrived for making of money round the edges with letters, grainings, or other marks or figures reſembling thoſe on the edges of money coined in his majeſty's mint, nor

No ſmith, &c. except imployed in the mint, &c. ſhall make or mend any dye, &c. to ſtamp any current coin of gold or ſilver, nor make any edging tool, &c. nor coining preſs, nor cutting engine, nor have in their cuſtody any ſuch puncheon, &c.

any preſs for coinage, nor any cutting engine, for cutting round blanks by force of a ſcrew out of flatted bars of gold, ſilver or other metal, nor ſhall knowingly buy or ſell, hide or conceal, or without lawful authority, or ſufficient excuſe for that purpoſe, knowingly have in his, her or their houſes, cuſtody or poſſeſſion, any ſuch puncheon, counter puncheon, matrix, ſtamp, dye, edger, cutting engine, or other tool or inſtrument before-mentioned; and if any ſmith, engraver, founder, or other perſon or perſons whatſoever (other than and except as aforeſaid) ſhall offend in any the matters or things aforeſaid, then all and every ſuch offender and offenders, their counſellors, procurers, aiders and abettors, ſhall be and is and are hereby adjudged to be guilty of high treaſon, and being of the ſaid offences or any of them convicted or attainted, according to the order and courſe of the laws of this realm, ſhall ſuffer death as in the caſe of high treaſon.

Offenders, &c. guilty of high treaſon, and ſhall ſuffer death.

Sect. 2. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons whatſoever, from and after the ſaid fifteenth day of *May*, ſhall without lawful authority for that purpoſe wittingly or knowingly convey or aſſiſt in the conveying out of his majeſty's mint in the *Tower* of *London*, or out of any other of his majeſty's mints, any puncheon, counter puncheon, matrix, dye, ſtamp, edger, cutting engine, preſs or other tool, engine or inſtrument uſed for or about the coining of monies there, or any uſeful part of ſuch tools or inſtruments, that then as well the ſaid perſon and perſons ſo offending, their counſellors, procurers, aiders or abettors, as alſo all and every perſon and perſons knowingly receiving, hiding or concealing the ſame, ſhall be and is, and are hereby adjudged to be guilty of high treaſon, and being of the ſaid offences or any of them convicted or attainted, according to the order and courſe of the laws of this realm, ſhall ſuffer death as in caſe of high treaſon.

Perſons conveying out of the mint any puncheon, &c. and concealing the ſame, to be guilty of high treaſon.

Sect. 3. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons (other than the perſons employed in his majeſty's mint or mints, or ſuch as ſhall have authority from the lords commiſſioners of the treaſury, or lord high treaſurer of *England*, for the time being) ſhall, after the ſaid fifteenth day of *May*, mark on the edges any the current coin of this kingdom, or if any perſon or perſons whatſoever ſhall mark on the edges any of the diminiſhed coin of this kingdom, or any counterfeit coin reſembling the coin of this kingdom, with letters or grainings, or other marks or figures like unto thoſe on the edges of money coined in his majeſty's mint; every ſuch offence ſhall be and is hereby adjudged to be high treaſon, and the offender and offenders therein, his and their counſellors, procurers, aiders and abettors, being thereof convicted or attainted according to the order and courſe of the laws of this realm, ſhall ſuffer death as in caſe of high treaſon.

Like penalty on perſons marking the edges of any counterfeit coin,

Sect. 4. "And be it further enacted by the authority aforeſaid, That if any perſon or perſons whatſoever, after the ſaid fifteenth day of *May*, ſhall colour, gild, or caſe over with gold or ſilver, or with any waſh or materials producing the colour of gold or ſilver, any coin reſembling any

or colouring, gilding, &c. any coin reſembling the current coin.

any the current coin of this kingdom, or any round blanks of baſe metal or of coarſe gold or coarſe ſilver of a fit ſize and figure to be coined into counterfeit milled money, reſembling any the gold or ſilver coin of this kingdom; or if any perſon or perſons ſhall gild over any ſilver blanks of a fit ſize and figure to be coined into pieces reſembling the current gold coin of this kingdom; all and every ſuch perſon and perſons ſo offending, their counſellors, procurers, aiders and abettors, ſhall be and is and are hereby adjudged to be guilty of high treaſon, and being convicted or attainted thereof, according to the order and courſe of the laws of this realm, ſhall ſuffer death as in caſe of high treaſon.

Puncheon, dye, &c. found in the poſſeſſion of any perſon not imployed in the mints, may be ſeized and produced in evidence.

Sect. 5. "And be it further enacted by the authority aforeſaid, That if any puncheon, dye, ſtamp, edger, cutting engine, preſs, flaſk or other tool, inſtrument or engine, uſed or deſigned for coining or counterfeiting gold or ſilver monies, or any part of ſuch tool or engine, ſhall, at any time after the ſaid fifteenth day of *May*, be hid or concealed in any place, or found in the houſe, cuſtody or poſſeſſion of any perſon or perſons whatſoever, not then imployed in the coining of money in ſome of his majeſty's mints, nor having the ſame by ſome lawful authority, that then it ſhall and may be lawful to and for any perſon or perſons whatſoever, diſcovering the ſame, to ſeize, and he and they are hereby required to ſeize the ſame, and to carry them forthwith to ſome juſtice of peace of the county, city, or place where the ſame ſhall be ſo ſeized and by him ſecured, to be produced in evidence againſt any perſon or perſons who ſhall or may be proſecuted for any ſuch offence, in ſome court of juſtice proper for the determination thereof; and after ſuch time as they or any of them ſhall have been produced in evidence, as well the ſame ſo produced as the other ſo ſeized, and not made uſe of in evidence, and every of them, ſhall forthwith, by order of that court where ſuch offender or offenders ſhall be tried, or by order, and in the preſence of ſuch or ſome other juſtice of the peace, in caſe there be no ſuch trial, be totally defaced and deſtroyed; and if, after the ſaid fifteenth day of *May*, any counterfeit or unlawfully diminiſhed money ſhall be produced in any court of juſtice, either in evidence againſt any perſon or perſons for any offence relating to the counterfeiting or unlawfully diminiſhing of money, or otherwiſe, that then, or immediately after evidence given, the judge or judges of ſuch court ſhall cauſe ſuch monies to be cut in pieces in open court, or in the preſence of ſome juſtice of the peace, and then to be delivered to or for ſuch perſon or perſons to whom the ſame of right ſhall appertain.

Counterfeit money, &c. produced in evidence or otherwiſe, to be afterwards cut in pieces.

Perſons blanching copper for ſale, or mixing blanched copper with ſilver, &c. or taking or paying counterfeit milled money, &c.

Sect. 6. "And whereas ſeveral mixtures of metals have been invented in imitation of gold and ſilver, and blanched copper is principally made uſe of in imitatation of ſilver, and ſeldom, if ever, for any honeſt or good purpoſe: Be it further enacted by the authority aforeſaid, That if any perſon or perſons whatſoever, after the ſaid fifteenth day of *May*, ſhall blanch copper for ſale, or mix blanched copper with ſilver, or knowingly buy or ſell, or offer to ſale, blanched copper alone, or mixed with ſilver, or ſhall knowingly and fraudulently buy or ſell, or offer to ſale, any malleable compoſition or mixture of metals or minerals, which ſhall be heavier than ſilver, and look, and touch, and wear like ſtandard gold, but be

be manifeſtly worſe than ſtandard, or ſhall take, receive, pay, or put off any counterfeit milled money, or any milled money whatſoever unlawfully diminiſhed, and not cut in pieces, at or for a lower rate or value than the ſame by its denomination doth or ſhall import, or was coined or counterfeited for, that then all and every ſuch perſon and perſons ſhall be deemed and adjudged guilty of felony, and, being thereof convicted or attainted, according to the order and courſe of the laws of this realm, ſhall ſuffer death as in caſe of felony.

to be guilty of felony.

Attainder by this act not to make corruption of blood, &c.

Sect. 7. "Provided always, and be it enacted by the authority aforeſaid, That this act, or any thing therein contained, or any attainder or attainders of any perſon or perſons for any offence or offences made treaſon or felony by this act, ſhall not in any wiſe extend, or be judged, interpreted, or expounded to make any corruption of blood to any the heir or heirs of any ſuch offender or offenders, or to make the wife of any ſuch offender to loſe or forfeit her dower of or in any lands, tenements, or hereditaments, or her title, action, or intereſt in the ſame; and that all and every perſon or perſons that ſhall, at any time after the ſaid fifteenth day of *May*, be accuſed or impeached of any the offences made treaſon or felony by this act, ſhall or may be indicted, arraigned, tried, convicted, or attainted, by ſuch like evidence, and in ſuch manner and form, as now are, or may by the laws of this realm be had or uſed againſt any offender or offenders for counterfeiting the king's money; any thing in this act contained, or any other law or ſtatute to the contrary notwithſtanding.

By what evidence offenders may be convicted.

Offences in 6 & 7 *W.* 3. *c.* 17. may be heard in the *King's Bench*, or at a Gaol delivery.

Sect. 8. "And for the rendring more effectual an act made in the ſixth and ſeventh years of his majeſty's reign, intituled, *An act to prevent counterfeiting and clipping the coin of this kingdom:* Be it enacted by the authority aforeſaid, That all and every the crimes and offences, ſpecified and mentioned in the ſaid act, may be heard and determined upon indictment or preſentment either in his majeſty's court of *King's Bench*, or before the juſtices of *Oyer* and *Terminer*, or juſtices of Aſſize, or general Gaol delivery.

Proſecution to be in three months.

By 9 & 10 *W.* 3. *c.* 21. *ſect.* 1. any perſon may deface counterfeit money.

Sect. 9. "Provided always, and be it enacted, That this act ſhall continue and be in force until the end of the next ſeſſion of parliament, and no longer; and that no proſecution ſhall be made for any offence againſt this act, unleſs ſuch proſecution be commenced within three months after ſuch offence committed. This act made perpetual by 7 *Annæ*, *c.* 25. *ſect.* 3. and by *ſect.* 2. the makers or menders of tools are to be proſecuted within ſix months.

Stat. 9 & 10 *W.* 3. *c.* 24. [*A. D.* 1698. *Intituled*] "An act for the better preventing the counterfeiting, clipping, and other diminiſhing the coin of this kingdom."

"Whereas the preventing the currency of clipt and unlawfully diminiſhed, and counterfeit money, is a more effectual means to preſerve the coin of this kingdom intire and pure, than the moſt rigorous laws for the puniſhment

puniſhment of ſuch as diminiſh or counterfeit the ſame: And whereas by the known laws of this kingdom no perſon ought to pay, or knowingly tender in payment, any counterfeit or unlawful diminiſhed money, and all perſons not only may refuſe to receive the ſame, but may, and by the ancient ſtatutes and ordinances of this kingdom, have been required to deſtroy and deface the ſame, and more eſpecially the tellers in the receipt of the *Exchequer*, by their duty and oath of office, are required to receive no money but good and true: And to the end the ſame might the better be diſcerned and known, by the ancient courſe of the ſaid receipt of the *Exchequer* all money ought to be received there by weight as well as tale: For the reſtoring of which courſe, together with other things, an act was made in the laſt ſeſſion of this preſent parliament, intituled, *An act for the better obſervation of the courſe anciently uſed in the receipt of the* Exchequer, whereby amongſt other things it is enacted, That the reſpective tellers of the ſaid receipt of the *Exchequer*, when any money ſhall be brought to the ſaid receipt of the *Exchequer*, to be there paid, ſhall without delay receive it, weighing the ſame in intire ſums or otherwiſe, and making due entry of the weight and tale thereof, according to the ancient courſe; but no proviſion is made in the ſaid act, that the ſaid tellers ſhall refuſe to receive the ſaid money, in caſe it ſhall not be of its due weight, and the former and ancient laws being grown into deſuetude, whereby unlawfully diminiſhed and counterfeit money receive a currency, and wicked and traiterous perſons are encouraged to diminiſh and counterfeit the ſame: Now to the end the kingdom, after ſo vaſt a charge and expence for the reformation of the ſilver coin, and reſtoring it to its due weight and purity, may not relapſe into the ſame evil, from which it hath been ſo lately delivered with great difficuly and hazard, and that counterfeit and unlawfully diminiſhed money, which already begins to increaſe, may be defaced and deſtroyed; Be it declared and enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in parliament aſſembled, and by authority of the ſame, That it is and ſhall be lawful to and for any perſon, to whom any ſilver money ſhall be tendred, any piece or pieces whereof ſhall be diminiſhed, otherwiſe than by reaſonable wearing, or that by the ſtamp, impreſſion, colour, or weight thereof, he ſhall ſuſpect to be counterfeit, to cut, break, or deface ſuch piece or pieces; and if any piece ſo cut, broken, or defaced, ſhall appear to be counterfeit, the perſon tendring the ſame ſhall bear the loſs thereof; but if the ſame ſhall be of due weight, and appear to be lawful money, the perſon that cut, broke, or defaced the ſame, ſhall, and is hereby required to take and receive the ſame at the rate it was coined for; and if any queſtion or diſpute ſhall ariſe, whether the piece ſo cut be counterfeit, it ſhall be heard, and finally determined by the mayor, bailiff, or bailiffs, or other chief officer of any city or town corporate, where ſuch tender ſhall be made; and if ſuch tender ſhall be made out of any city or town corporate, then by the next juſtice of the peace of the county, inhabiting or being near the place

8 & 9 W. 3. c. 28.

Any perſon may cut or deface diminiſhed or counterfeit money.

Perſon tendring ſuch money to bear the loſs, &c.

Mayor, &c. to determine diſputes,

place where ſuch tender ſhall be made; and the ſaid mayor, or other chief officer, and juſtice of the peace, ſhall have full power and authority to adminiſter an oath, as he ſhall ſee convenient, to any perſon for the determining any queſtions relating to the ſaid piece.

and adminiſter an oath.

Officers of the *Exchequer*, receivers general, &c. required to cut ſuch money ſo tendred, &c.

Sect. 2. "And be it further enacted by the authority aforeſaid, That the tellers of the receipt of *Exchequer*, and their deputies and clerks, and the receivers general of every branch of his majeſty's revenue, aids, impoſitions, duties, and taxes, given or granted, or to be hereafter given or granted, ſhall and are hereby required to cut, break or deface, or cauſe to be cut, broken or defaced, every piece of counterfeit, or unlawfully diminiſhed ſilver money, that ſhall be tendred in payment to them to the uſe of his majeſty, his heirs or ſucceſſors, or for any part of the revenue, aids, impoſitions, duties or taxes of his majeſty, his heirs or ſucceſſors; and the better to diſcover ſilver money that is counterfeit, or unlawfully diminiſhed, from that which is good and true, the tellers and receivers general, and their reſpective deputies and clerks, ſhall weigh in whole ſums, or otherwiſe, all ſilver money by them received; and if the ſame, or any piece thereof, ſhall, by the weight or otherwiſe, appear to be counterfeit, or unlawfully diminiſhed, the ſame ſhall not be received by or from them in the ſaid receipt of the *Exchequer*, nor be allowed them upon their reſpective accounts.

and to weigh all ſilver money received.

8 & 9 *W.* 3. *c.* 26. continued.

Sect. 3. "And be it further enacted by the authority aforeſaid, That an act made the laſt ſeſſion of this preſent parliament, intituled, *An act for the better preventing the counterfeiting the current coin of this kingdom*, and every article and clauſe therein contained, ſhall from henceforth continue and be of force until the five and twentieth day of *March*, which ſhall be in the year of our Lord one thouſand ſeven hundred and one, and from thence to the end of the next ſeſſion of parliament."

Stat. 1 *Ann. ſtat.* 2. *c.* 9. [*A. D.* 1701. *Intituled*] "An act for continuing the act made in the eighth year of his late majeſty's reign, for better preventing the counterfeiting the current coin of this kingdom."

9 *W.* 3. *c.* 21. 8 *W.* 3. *c.* 26. continued till 1709. Made perpetual by 7 *Ann. c.* 25. *ſect.* 1.

"Whereas an act of parliament made in the eighth year of his late majeſty's reign, intituled, *An act for the better preventing the counterfeiting the current coin of this kingdom*, was, by a clauſe in another act made in the ninth year of his ſaid majeſty's reign, continued in force to the five and twentieth day of *March* one thouſand ſeven hundred and one, and from thence to the end of the next ſeſſion of parliament: And whereas the ſaid act hath been found of good uſe for ſuppreſſing the counterfeiting the current coin of this kingdom, by ſuch tools and inſtruments as are therein prohibited: Be it enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this parliament aſſembled, and by the authority of the ſame, That the ſaid act made in the eighth year of his late majeſty's

majeſty's reign, and every article and clauſe therein contained, ſhall from henceforth continue and be in force until the five and twentieth day of *March*, which ſhall be in the year of our lord one thouſand ſeven hundred and nine, and from thenceforth unto the end of the firſt ſeſſion of parliament then next enſuing, and no longer.

Sect. 2. " And whereas in the aforeſaid act it is ordained, That no proſecution ſhall be made for any offence againſt the ſaid act, unleſs ſuch proſecution be commenced within three months after ſuch offence committed: Be it further enacted by the authority aforeſaid, That the proſecution of ſuch perſon or perſons as offend againſt the ſaid act, by making or mending, or beginning or proceeding to make or mend any coining tool or inſtrument therein prohibited, or by marking of money round the edges with letters or grainings, may be commenced at any time within ſix months after ſuch offence committed; any thing in the ſaid act to the contrary in any wiſe notwithſtanding.

Offenders may be proſecuted in ſix months after offence.

Stat. 7 *Ann. c.* 23. [*A. D.* 1708.] *made, among other purpoſes,* " for proſecuting offences concerning the coin in *England.*"

Sect. 4. " Provided always, and it is hereby enacted by the authority aforeſaid, That (over and above the ſums not exceeding three thouſand pounds *per annum*, and five hundred pounds *per annum*, mentioned in the ſaid former acts, for the uſes of the mint) it ſhall and may be lawful to and for the lord high treaſurer of *Great Britain*, and the under treaſurer, or the commiſſioners of the treaſury, for the time being, by orders or warrants, to iſſue out of the *Exchequer*, or diſpoſe of the monies ariſing by the ſaid coinage duty, yearly and every year, from and after the firſt day of *June* one thouſand ſeven hundred and nine, any ſum or ſums not exceeding the yearly ſum of four hundred pounds, for the charges and expences of the officers, and others imployed and to be imployed in the proſecution of offences in counterfeiting, diminiſhing, or otherwiſe concerning the current coins of *Great Britain*, in that part thereof called *England*; and any officer or officers imployed, as aforeſaid, may have and receive the ſaid ſum not exceeding four hundred pounds, or any part thereof, without being liable to any forfeiture, diſability, or incapacity whatſoever; the ſaid recited acts, or any other law, ſtatute, or uſage to the contrary notwithſtanding."

After 1 *June* 1709, the lord treaſurer, *&c.* may further iſſue, *&c.* 400*l. per annum*, for the charges of officers, to be imployed in proſecuting offences in counterfeiting, *&c.* the coin of *Great Britain.*

Stat. 15 *Geo.* 2. *c.* 28. [*A. D.* 1742. *Intituled*] " An act for the more effectual preventing the counterfeiting of the current coin of this kingdom, and the uttering or paying of falſe or counterfeit coin."

" Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon whatſoever ſhall, after the twenty-ninth day of *September* in the year of our lord one thouſand ſeven hundred and forty-two,

waſh, gild, or colour any of the lawful ſilver coin called a *ſhilling* or a *ſixpence*, or any counterfeit or falſe ſhilling or ſixpence, or add to or alter the impreſſion, or any part of the impreſſion, of either ſide of ſuch lawful or counterfeit ſhilling or ſixpence, with intent to make ſuch ſhilling reſemble or look like, or paſs for a piece of lawful gold coin called a *guinea*, or with intent to make ſuch ſixpence reſemble or look like, or paſs for a piece of lawful gold coin called an *half guinea*; or ſhall file, or any ways alter, waſh, or colour any of the braſs monies called *half-pennies* or *farthings*, or add to or alter the impreſſion, or any part of the impreſſion of either ſide of an halfpenny or farthing, with intent to make an halfpenny reſemble or look like, or paſs for a lawful ſhilling, or with intent to make a farthing reſemble or look like, or paſs for a lawful ſixpence, the perſon and perſons ſo offending, in any of the matters aforeſaid, their counſellors, aiders, abettors and procurers ſhall be, and is and are hereby adjudged to be guilty of high treaſon.

High treaſon to gild ſilver coin, &c.

Sect. 2. "And whereas the uttering of falſe money, knowing it to be falſe, is a crime frequently committed all over the kingdom, and the offenders therein are not deterred, by reaſon that it is only a miſdemeanor, and the puniſhment very often but ſmall, though there be great reaſon to believe, that the common utterers of ſuch falſe money are either themſelves the coiners, or in confederacy with the coiners thereof: For preventing whereof, be it hereby further enacted by the authority aforeſaid, That if any perſon whatſoever ſhall, after the ſaid twenty-ninth day of *September*, utter or tender in payment any falſe or counterfeit money, knowing the ſame to be falſe or counterfeit, to any perſon or perſons, and ſhall be thereof convicted, ſuch perſon ſo offending ſhall ſuffer ſix months impriſonment, and find ſureties for his or her good behaviour for ſix months more, to be computed from the end of the ſaid firſt ſix months; and if the ſame perſon ſhall afterwards be convicted a ſecond time of the like offence of uttering or tendering in payment any falſe or counterfeit money, knowing the ſame to be ſo, ſuch perſon ſhall, for ſuch ſecond offence, ſuffer two years impriſonment, and find ſureties for his or her good behaviour for two years more, to be computed from the end of the ſaid firſt two years; and if the ſame perſon ſhall afterwards offend a third time in uttering or tendering in payment any falſe or counterfeit money, knowing the ſame to be ſo, and ſhall be convicted of ſuch third offence, he or ſhe ſhall be and is hereby adjudged to be guilty of felony, without benefit of clergy.

Uttering falſe money knowingly, ſix months impriſonment, and ſecurity for two years more.

For the ſecond offence, two years impriſonment, and ſecurity for two years.

For the third offence, felony, without clergy.

Sect. 3. "And it is hereby further enacted by the authority aforeſaid, That if any perſon whatſoever ſhall, after the ſaid twenty-ninth day of *September*, utter or tender in payment, any falſe or counterfeit money, knowing the ſame to be falſe or counterfeit, to any perſon or perſons, and ſhall either the ſame day, or within the ſpace of ten days then next, utter or tender in payment any more or other falſe or counterfeit money, knowing the ſame to be falſe or counterfeit, to the ſame perſon or perſons, or to any other perſon or perſons, or ſhall at the time of ſuch uttering

Uttering falſe money twice within ten days;

uttering or tendering have about him or her, in his or her cuſtody, one or more piece or pieces of counterfeit money, beſides what was ſo uttered or tendered, then ſuch perſon ſo uttering or tendering the ſame, ſhall be deemed and taken to be a common utterer of falſe money, and being thereof convicted, ſhall ſuffer a year's impriſonment, and ſhall find ſureties for his or her good behaviour for two years more, to be computed from the end of the ſaid year; and if any perſon having been once ſo convicted as a common utterer of falſe money, ſhall afterwards again utter or tender in payment any falſe or counterfeit money to any perſon or perſons, knowing the ſame to be falſe or counterfeit, then ſuch perſon being thereof convicted, ſhall for ſuch ſecond offence be, and is hereby adjudged to be guilty of felony without benefit of clergy."

or having other falſe money in cuſtody,

to ſuffer a year's impriſonment, &c.

Subſequent offence, felony, &c.

Sect. 4. "And it is hereby further enacted by the authority aforeſaid, That the perſon or perſons convicted of any of the treaſons and felonies reſpectively herein before mentioned, ſhall ſuffer death as in caſe of high treaſon and felony reſpectively; but the blood of the heirs of ſuch offender ſhall not be thereby corrupted, nor ſhall his wife thereby forfeit or loſe her dower out of or in his lands or real eſtate.

Blood not to be corrupted.

Sect. 5. "And it is hereby further enacted, That the perſon and perſons that ſhall be guilty of any of the treaſons, felonies or crimes aforeſaid, ſhall be indicted, arraigned, tried, and convicted by ſuch like evidence, and in ſuch manner as is now uſed and allowed againſt any offenders for counterfeiting the lawful coin, provided that there ſhall be no proſecution for any of the offences made treaſon or felony by this act, unleſs ſuch proſecution be commenced within ſix months next after ſuch offence ſhall be committed."

Evidence to be the ſame as now uſed againſt counterfeiting the coin.

Sect. 6. "And whereas the coining or counterfeiting any of the copper money of this kingdom is only a miſdemeanor, and the puniſhment often very ſmall; be it hereby further enacted by the authority aforeſaid, That if any perſon whatſoever ſhall, after the ſaid twenty-ninth day of *September*, make, coin or counterfeit any braſs or copper money, commonly called a *halfpenny*, or a *farthing*, ſuch perſon offending therein, and his, her and their aiders, abetters and procurers being thereof convicted, ſhall ſuffer two years impriſonment, and find ſureties for his or her good behaviour for two years more, to be computed from the end of the ſaid firſt two years."

Coiners of copper money to be impriſoned two years.

Sect. 7. "And it is hereby further enacted, That whoever ſhall, after the ſaid twenty-ninth day of *September*, apprehend any perſon or perſons who have committed any of the offences hereby made high treaſon or felony, or who ſhall have made or counterfeited any of the copper money aforeſaid, and ſhall proſecute ſuch offenders, until he, ſhe or they ſhall be thereof convicted, ſuch proſecutor and proſecutors ſhall have and receive from the ſheriff or ſheriffs of the county or city, where ſuch conviction ſhall be made, for every ſuch offender ſo convicted of any of the treaſons or felonies aforeſaid, the ſum of forty pounds; and for every perſon ſo convicted of counterfeiting any of the ſaid copper money, the ſum of ten

40 *l.* for convicting a perſon of treaſon and felony;

And 10 *l.* for convicting a perſon of

counterfeiting copper money.

pounds, without paying any fee for the ſame, within one month after ſuch conviction, and demand thereof made, by tendering a certificate to the ſaid ſheriff or ſheriffs for the time being, or his or their under-ſheriff,

Certificate to be given by the judge.

under the hands of the judge or juſtices before whom ſuch conviction ſhall have been made, certifying ſuch conviction, and that the offender or offenders were apprehended and proſecuted by the perſons claiming the ſaid reward, and thereby directing in what ſhares and proportions the ſaid reward ſhall be paid and divided to and amongſt ſuch proſecutor or proſecutors; which certificate the ſaid judge or juſtices are hereby required to give without delay or fee; and if the ſaid ſheriff or ſheriffs ſhall not pay the ſaid

Penalty on the ſheriffs not paying the reward.

reward accordingly, within the time aforeſaid, he or they ſhall forfeit to proſecutor and proſecutors ſeverally, double the ſum which by the ſaid certificate ſhall be directed to be ſeverally paid to them, to be recovered by him, her or them, or his, her or their executors or adminiſtrators, in any of his majeſty's courts of record at *Weſtminſter*, by action of debt, bill or information, with treble coſts of ſuit, expended or paid in recovering

Sheriff to be allow'd ſuch payments in his accounts, &c.

the ſame; and ſuch ſheriff or ſheriffs ſhall be allowed, or may deduct ſuch rewards, upon his or their accounting with his majeſty, without any fee to be paid in reſpect thereof; and if he or they ſhall not on paſſing ſuch account have money ſufficient in his or their hands to anſwer what ſhall have been paid for ſuch rewards, then the ſame ſhall be repaid by the lord treaſurer, or commiſſioners of the treaſury for the time being, out of the revenues of the crown, on certificate for that purpoſe, from the clerk of the pipe."

If offenders, being out of priſon, impeach two others, they ſhall be pardoned.

Sect. 8. "And be it hereby further enacted by the authority aforeſaid, that whoever being out of priſon ſhall, after the ſaid twenty-ninth day of *September*, commit any of the offences aforeſaid, and ſhall afterwards diſcover two or more perſons, who ſhall, after the time aforeſaid, have committed any of the ſaid offences, ſo as ſuch two or more perſons ſhall be thereof convicted, ſuch diſcoverer ſhall have, and is hereby intitled to his majeſty's moſt gracious pardon for ſuch his or her offences."

Manner of proſecuting a ſecond offence in another county.

Sect. 9. "And be it hereby further enacted, That if any perſon ſhall be convicted of uttering or tendering any falſe or counterfeit money as aforeſaid, and ſhall afterwards be guilty of the like offence, in any other county or city, the clerk of the aſſize, or clerk of the peace for the county or city where ſuch firſt conviction was ſo had, ſhall at the requeſt of the proſecutor, or any other on his majeſty's behalf, certify the ſame by a tranſcript in few words, containing the effect and tenor of ſuch conviction; for which certificate two ſhillings and ſixpence, and no more, ſhall be paid; and ſuch certificate being produced in court, ſhall be ſufficient proof of ſuch former conviction."

7 Annæ, c. 24. ſect 4.

Sect. 10. "And whereas by an act made in the ſeventh year of the reign of her late majeſty queen *Anne*, intituled, "An act for the continuing the former act, for the encouragement of coinage, and to encourage the bringing foreign coins, and *Britiſh* or foreign plate to be coined, and for making proviſion for the mints in *Scotland*, and for the proſecuting offences concerning

cerning the coin in *England*," there is a limited ſum of four hundred pounds a year, directed to be allowed out of the coinage duty for the expences of proſecuting offenders againſt the laws relating to the coin; which ſum for ſeveral years laſt paſt has proved greatly deficient, inſomuch that there appears to have been expended for the carrying on of thoſe proſecutions, the ſum of ſeven hundred and two pounds, three ſhillings and ſeven pence, over and above the ſum of four hundred pounds *per annum* allowed for that ſervice; and as the law now ſtands, the ſaid ſum of ſeven hundred and two pounds, three ſhillings and ſeven pence, cannot be brought to account; Be it thereof further enacted, That the lord high treaſurer, or the lords commiſſioners of the treaſury for the time being, ſhall and may, out of the money ariſing by the coinage duty, order and allow ſuch further ſums of money as the expences of the ſaid proſecutions have in ſuch laſt years amounted to, over and above the ſaid four hundred pounds a year; and alſo ſhall and may, at all times hereafter, order and allow out of the money ariſing by the ſaid coinage duty ſuch ſums of money, for defraying the future expences of the ſaid proſecutions, as he or they ſhall ſee fit, provided the ſaid expences do not, in any one year, exceed the ſum of ſix hundred pounds."

Arrears of charges of proſecution to be allowed.

Future expences ſettled.

Commitment.

COMMITMENT, is the ſending of a perſon to priſon by warrant or order, either for a crime, or for contumacy in refuſing to do a thing required. Where a man is committed for a crime, the commitment muſt be *until diſcharged according to law*; but for contumacy, *until he comply* and perform the thing required; for in that caſe he ſhall not lie till ſeſſions, but ſhall be diſcharged upon the performing his duty. *Carth.* 153. *Trin.* 2 *W. & M.* in *B. R.*

All perſons who are apprehended for offences not bailable, as alſo perſons who neglect to offer bail for offences which are bailable, muſt be committed; and where ever a juſtice of peace is impowered to bind a perſon over, or to cauſe him to do a certain thing, he may commit him *quouſque*, *&c.* if in his preſence he ſhall refuſe to be ſo bound, or to do ſuch thing. 2 *Hawk. P. C.* 216.

It is laid down by ſerjeant *Hawkins*, as a matter which ſeems agreed by all the old books, that whereſoever a conſtable or private perſon may juſtify the arreſting another for felony or treaſon, he may alſo juſtify the ſending or bringing him to the common gaol; and that every private perſon has as much authority in caſes of this kind, as the ſheriff, or any other

Who may commit, and to what place.

other officer, and may juſtify ſuch impriſonment by his own authority, but not by the command of another. 2 *Hawk. P. C.* 116, 117.

But in as much as it is certain, that a perſon lawfully making ſuch an arreſt, may juſtify bringing the party to the conſtable, in order to be carried by him before a juſtice of peace; and in as much as the ſtatutes of the 1 & 2 *P. & M. c.* 13. and 2 & 3 *P. & M. c.* 10. which direct in what manner perſons brought before a juſtice of the peace for felony, ſhall be examined by him, in order to their being committed or bailed, ſeem clearly to ſuppoſe, that all ſuch perſons are to be brought before ſuch juſtice for ſuch purpoſe; and inaſmuch as the ſtatute of 31 *Car.* 2. commonly called the *habeas corpus* act, ſeems to ſuppoſe that all perſons, who are committed to priſon, are there detained by virtue of ſome warrant in writing, which ſeems to be intended of a commitment by ſome magiſtrate; and the conſtant tenor of the late books, practice and opinions, are agreeable hereto; it is certainly moſt adviſeable at this day, for any private perſon who arreſts another for felony, to cauſe him to be brought, as ſoon as conveniently he may, before ſome juſtice of peace, that he may be committed or bailed by him. 2 *Hawk. P. C.* 117. *H. P. C.* 91, 112. *Dalt. c.* 118.

It is certain, that the privy council, or any one or two of them, or ſecretary of ſtate, may lawfully commit perſons for treaſon, and for other offences againſt the ſtate, as in all ages they have done. 2 *Hawk. P. C.* 117.

Stat. 5 *Hen.* 4. *c.* 10. [*A. D.* 1403. *Intituled*] "Juſtices of the peace ſhall impriſon none but in the common gaol."

4 Co. 119. Cro. El. 129. "*Item*, Becauſe that divers conſtables of caſtles within the realm of *England* be aſſigned to be juſtices of peace by commiſſion of our lord the king, and by colour of the ſaid commiſſions they take people, to whom they bear evil will, and impriſon them within the ſaid caſtles, till they have made fine and ranſom with the ſaid conſtables for their deliverance; (2) it is ordained and eſtabliſhed, that none be impriſoned by any juſtice of the peace, but only in the common gaol; ſaving to lords and other (which have gaols) their franchiſe in this caſe."

Since this ſtatute it has been held, that regularly no one can juſtify the detaining a priſoner in cuſtody out of the common gaol, unleſs there be ſome particular reaſon for ſo doing; as if the party be ſo dangerouſly ſick, that it would apparently hazard his life to ſend him to the gaol; or there be evident danger of a *reſcous* from the rebels, &c. yet conſtant practice ſeems to authorize a commitment to a meſſenger; and it is ſaid, that it ſhall be intended to have been made in order for the carrying off the party to gaol. 2 *Hawk. P. C.* 118.

And it is ſaid, that if a conſtable bring a felon to gaol, and the gaoler refuſe to receive him, the town where he is conſtable ought to receive him till the next gaol-delivery. *H. P. C.* 114.

If

If a perſon arreſted in one county for a crime done in it, fly into another county and be retaken there, he may be committed by a juſtice of the firſt county to the gaol of ſuch county. *H. P. C.* 93.

But by the better opinion, if he had before any arreſt fled into ſuch county, he muſt be committed to the gaol thereof by a juſtice of ſuch county. 2 *Hawk. P. C.* 118. *Dalt. c.* 118.

Alſo it ſeems to be laid down as a rule by ſome books, that any offender may be committed to the gaol next to the place where he was taken, whether it lie in the ſame county or not. 2 *Hawk. P. C.* 118.

As priſoners ought to be committed at firſt to the proper priſon, ſo ought they not to be removed thence, except in ſome ſpecial caſes; for which ſee the *ſtat.* 31 *Car.* 2. *c.* 2. under **Bail.**

Stat. 6 *Geo.* 1. *c.* 19. [*A. D.* 1719.] "And whereas vagrants and other criminals, offenders and perſons charged with ſmall offences, are for ſuch offences, or for want of ſureties, to be committed to the county gaol, it being adjudged that by law, the juſtices of the peace cannot commit them to any other priſon for ſafe cuſtody, which by experience hath been found to be very prejudicial and expenſive: Be it enacted by the authority aforeſaid, That it ſhall and may be lawful, to and for the juſtices of the peace, within their reſpective juriſdictions, to commit ſuch vagrants, and other criminals, offenders, perſon and perſons, either to the common gaol or houſe of correction, as they in their judgment ſhall think proper; any law, cuſtom or uſage to the contrary notwithſtanding."

Juſtices of peace may commit vagrants, &c. to the common gaol or houſe of correction.

By *ſtat.* 24 *Geo.* 2. *c.* 55. If any perſon is apprehended upon a warrant indorſed in another county, for an offence not bailable, or if he ſhall not there find bail, he ſhall be carried back into the firſt county, and be committed, or, if bailable, bailed by the juſtices in ſuch firſt county, to appear at the next aſſizes or general gaol delivery, or next general or quarter-ſeſſions to be held for the county where the offence was committed.

Every commitment muſt be in writing, and under the hand and ſeal, and ſhew the authority of him that made it, and the time and place, and muſt be directed to the keeper of the priſon. *Hawk. P. C.* 119. It may be either in the king's name, and only teſted by the juſtice, or in the juſtice's name. 2 *Hawk. P. C.* 119.

Form of the commitment.

It may command the gaolers to keep the party in cloſe cuſtody; for this being what he is obliged to do by law, it can be no fault to command him to be ſo. 2 *Hawk. P. C.* 119.

It ought to ſet forth the crime with convenient certainty, whether the commitment be by the privy council, or any other authority, otherwiſe the officer is not puniſhable, by reaſon of ſuch *mittimus*, for ſuffering the party to eſcape; and the court, before whom he is removed by *habeas corpus*, ought to diſcharge or bail him; and this doth not only hold where no cauſe at all is expreſſed in the commitment, but alſo where

it

it is ſo looſely ſet forth that the court cannot adjudge whether it were a reaſonable ground for impriſonment. 2 *Hawk. P. C.* 119.

A commitment for high treaſon or felony in general, without expreſſing the particular ſpecies, has been held good. 2 *Hawk. P. C.* 119. But now, ſince the *habeas corpus act*, it ſeems that ſuch a general commitment is not good; and therefore where *A.* and *B.* were committed for aiding and abetting Sir *James Montgomery* to make his eſcape, who was committed by a warrant of a ſecretary of ſtate for high treaſon, on a *habeas corpus*, they were admitted to bail, becauſe it did not appear what ſpecies of treaſon Sir *James* was guilty of. *Skin.* 596. 1 *Salk.* 347. *S. C.*

It is ſafe to ſet forth that the party is charged upon oath; but this is not neceſſary; for it hath been reſolved, that a commitment for treaſon, or for ſuſpicion of it, without ſetting forth any particular accuſation or ground of the ſuſpicion, is good. 2 *Hawk. P. C.* 120.

Every ſuch *mittimus* ought to have a lawful concluſion; *viz.* that the party be ſafely kept till he be delivered by law, or by order of law, or by due courſe of law, or that he be kept till further order (which ſhall be intended of the order of law) or to the like effect; and if the party be committed only for want of bail, it ſeems to be a good concluſion of the commitment, that he be kept till he find bail; but a commitment till the perſon who makes it ſhall take further order, ſeems not to be good; and it ſeems that the party committed by ſuch or any other irregular *mittimus* may be bailed. 2 *Hawk. P. C.* 120.

Alſo a commitment grounded on an act of parliament ought to be conformable to the method preſcribed by ſuch ſtatute; as where the churchwardens of *Northampton* were committed on the 43 *Eliz. c.* 2. and the warrant concluded in the common form, *viz. until they be duly diſcharged according to law*; but the ſtatute appointing, *that the party ſhould there remain until he ſhould account*, for want of ſuch concluſion they were diſcharged. *Carth.* 152, 153.

So where one *Bracey* was committed by the commiſſioners of bankrupts, for refuſing to anſwer, and they concluded their warrant, *viz. until he conform himſelf to our authority, and be thence delivered by due courſe of law*; and upon the return of a *habeas corpus*, he was diſcharged; for the ſtatute only impowers them to commit *until he ſubmit himſelf to be by them examined.* 1 Salk. 348.

So where the warrant returned of a commitment by commiſſioners of bankrupt, for refuſing to be examined by them, was, *viz. or otherwiſe diſcharged by due courſe of law*, it was held naught; for the ſtatute is, he ſhall be committed until he ſubmit himſelf to be examined by the commiſſioners. 1 *Salk.* 351.

Defendant was committed, upon a conviction for deer-ſtealing, for a year, and till ſuch time as he ſhould be ſet in the pillory, whereas the act ſays for a year only, and therefore he was diſcharged. *Comb.* 305.

Duty of the gaoler.

By *ſtat.* 3 *Hen.* 7. *c.* 3. The ſheriff or gaoler ſhall certify the commitment to the next gaol-delivery. *See this act at large under title* Bail, p. 207.

Stat.

Stat. 3 *Jac.* 1. *c.* 10. [*A. D.* 1605. *Intituled*] "An act for the rating and levying of the charges for conveying malefactors and offenders to gaol."

"Whereas his majeſty's honeſt and loving ſubjects are much charged and burthened in conveying felons, and other malefactors and offenders againſt his majeſty's laws and ſtatutes, unto the gaol, puniſhable by impriſonment there, the ſaid felons and other malefactors and offenders having goods and chattels of their own, whereby to defray the ſame charge themſelves, to the great encouragement of ſuch malefactors and offenders in their ſaid wicked and bad courſes, and to the diſcouragement of his majeſty's ſaid honeſt and loving ſubjects in proſecuting the ſaid malefactors and offenders to be puniſhed according to their demerits; (2) Be it enacted by the king's moſt excellent majeſty, the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by authority of the ſame, That all and every perſon and perſons whatſoever, that from and after the end of this preſent ſeſſion of parliament ſhall be committed to the common or uſual gaol within any county or liberty within this realm, by any juſtice or juſtices of the peace, for any offence or miſdemeanor, to any ſuch gaol, That the ſaid perſon or perſons ſo to be committed, as aforeſaid, having means or ability thereunto, ſhall bear their own reaſonable charges for ſo conveying or ſending them to the ſaid gaol, and the charges alſo of ſuch as ſhall be appointed to guard them to ſuch gaol, and ſhall ſo guard them thither: (3) And if any ſuch perſon or perſons, ſo to be committed as aforeſaid, ſhall refuſe at the time of their commitment and ſending to the ſaid gaol, to defray the ſaid charges, or ſhall not then pay or bear the ſame, That then ſuch juſtice or juſtices of the peace ſhall and may by writing under his or their hand and ſeal, or hands and ſeals, give warrant to the conſtable or conſtables of the hundred, or conſtable or tithing-man of the tithing or townſhip where ſuch perſon or perſons ſhall be dwelling and inhabit, or from whence he or they ſhall be committed, as aforeſaid, or where he or they ſhall have any goods within the county or liberty, to ſell ſuch and ſo much of the goods and chattels of the ſaid perſons ſo to be committed, as by the diſcretion of the ſaid juſtice or juſtices of the peace ſhall ſatisfy and pay the charges of ſuch his or their conveying and ſending to the ſaid gaol, the appraiſement to be made by four of the honeſt inhabitants of the pariſh or tithing where ſuch goods or chattels ſhall remain and be, and the overplus of the money which ſhall be made thereof, to be delivered to the party to whom the ſaid goods ſhall belong.

At whoſe charge an offender ſhall be conveyed to gaol.

How the charges ſhall be levied, if the priſoner refuſe to pay them.

Sect. 2. "And be it further enacted by the authority aforeſaid, That if the ſaid perſon or perſons ſo to be committed, as aforeſaid, ſhall not have or be known to have any goods or chattels which may be ſold for the purpoſe aforeſaid, within the county or liberty, That then an indifferent tax or aſſeſſment ſhall be made by the conſtables and church-wardens, and two or three other the honeſt inhabitants of the pariſh, townſhip or tithing

If the offender be not able to bear his charges, the pariſhioners ſhall do it.

tithing where the ſaid offender or offenders ſhall be taken or apprehended; the ſaid taxation being allowed under the hand of one or more juſtice or juſtices of the peace, if there be ſuch conſtables or churchwardens there inhabiting; and in default of them, by four of the principal inhabitants of the ſaid pariſh, townſhip or tithing where ſuch offenders ſhall be taken or apprehended: (2) And if any ſo taxed or aſſeſſed, ſhall refuſe to pay their ſaid taxation, then the juſtice or juſtices of peace by whom the ſaid offenders ſhall be committed to priſon, as aforeſaid, or any other juſtice of peace near adjoining, ſhall and may give warrant, as aforeſaid, to the conſtable, tithing-man or other officer, there to diſtrain the goods of any ſo aſſeſſed, which ſhall refuſe to pay the ſame, and to ſell the ſame; (3) and that ſuch perſon or perſons ſo authorized, ſhall have full power and authority ſo to diſtrain, and by appraiſement of four ſubſtantial inhabitants of the ſaid place, to ſell a ſufficient quantity of the goods and chattels of the ſaid perſon ſo refuſing, for the levying of the ſaid taxation; and if any overplus of money come by the ſale thereof, the ſame to be delivered to the perſon or perſons, owner or owners thereof.

The remedy if any perſon taxed refuſe to pay.

Sect. 3. "And be it enacted by the authority of this preſent parliament, That if any action of treſpaſs or other ſuit ſhall happen to be attempted or brought againſt the perſon or perſons for taking of any diſtreſs, making of any ſale, or any other act by authority of this preſent act, the defendant or defendants in any ſuch action or ſuit, ſhall and may either plead Not guilty, or otherwiſe make avowry, Cognizance or juſtification for the taking of the ſaid diſtreſſes, making of ſale or other act by virtue of this act; (2) alledging in ſuch avowry, cognizance or juſtification, that the ſaid diſtreſs, ſale, treſpaſs or other thing whereof the plaintiff or plaintiffs complained, was done by authority of this act, and according to the tenor, purport and effect of this act, without any expreſſing or rehearſal of any other matter or circumſtance contained in this preſent act: (3) To which avowry, cognizance or juſtification the plaintiff ſhall be admitted to reply, That the defendant did take the ſaid diſtreſs, made the ſaid ſale, or did any other act or treſpaſs ſuppoſed in his declaration, of his own wrong, without any ſuch cauſe alledged by the ſaid defendant; whereupon the iſſue in every ſuch action ſhall be joined to be tried by verdict of twelve men, and not otherwiſe, accuſtomed in other perſonal actions; (4) and upon the trial of that iſſue, the whole matter to be given on both parties in evidence, according to the very truth of the ſame; (5) And after ſuch iſſue tried for the defendant, or nonſuit of the plaintiff after appearance, the ſaid defendant to recover treble damages by reaſon of his wrongful vexation in that behalf, with coſts alſo on that part ſuſtained, and that to be aſſeſſed by the ſame jury or writ, to enquire of the damages as the ſame ſhall require: (6) This act to continue until the end of the firſt ſeſſion of the next parliament. 3 *Car.* 1. *c.* 4. Continued until the end of the firſt ſeſſion of the next parliament, *and farther continued by* 16 Car. 1. c. 4."

The defendant's plea in an action brought for any thing done by force of this act.

The defendant ſhall recover treble damages and coſts of ſuits.

The continuance of this act.

Stat.

Stat. 27 *Geo.* 2. *c.* 3. [*A. D.* 1754.] *made, among other purpoſes,* "for the better ſecuring conſtables and others the expences of conveying offenders to gaol."

"Whereas by an act paſſed in the third year of the reign of king *James* the Firſt, intituled, *An act for the rating and levying of the charges for conveying malefactors and offenders to the gaol*; every offender ſo to be conveyed ſhall bear the charges of himſelf, and of thoſe who convey him; and if he refuſe ſo to do, his goods within the ſame county may be diſtrained and ſold to ſatisfy the ſame; and if he hath no goods, the conſtable, churchwardens and other inhabitants of the pariſh where he was taken, ſhall make a tax on every inhabitant thereof to pay the ſaid charges: And whereas the taxing the pariſh where ſuch offender was taken to pay ſuch charges, is a great diſcouragement to pariſhes to take offenders; and it is alſo found by experience to be very difficult to make a rate on the inhabitants to raiſe ſuch tax; whereby conſtables and others are often kept out of their money by them advanced for the ſervice of the publick, and ſometimes loſe the ſame, to their very great injury and vexation: For remedy whereof; Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That, from and after the twenty-fourth of *June* one thouſand ſeven hundred and fifty-four, when any perſon, not having goods or money within the county where he is taken, ſufficient to bear the charges of himſelf, and of thoſe who convey him, is committed to gaol or the houſe of correction by warrant from any juſtice or juſtices of the peace, then, on application by any conſtable or other officer who conveyed him to any juſtice of the peace for the ſame county or place, ſhall upon oath examine into and aſcertain the reaſonable expences to be allowed ſuch conſtable or other officer, and ſhall forthwith, without fee or reward, by warrant under his hand and ſeal, order the treaſurer of the county or place to pay the ſame, which the ſaid treaſurer is hereby required to do, as ſoon as he receives ſuch warrant; and any ſum ſo paid ſhall be allowed in his accounts.

3 Jac. 1. c. 10.

Offenders not having ſufficient to defray the expences of conveying them to gaol, &c.

Juſtices to grant a warrant on the treaſurer of the county for payment of the charges.

Sect. 2. "And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-fourth day of *June* ſo much of the above-mentioned act paſſed in the third year of king *James* the Firſt, as relates to taxing the pariſh where offenders are taken, for defraying the charges of conveying offenders to gaol, ſhall be repealed."

Part of the act of 3 Jac. 1. c. 10. relating to taxing pariſhes for conveying offenders to gaol, repealed.

A perſon legally committed for a crime, certainly appearing to have been done by ſome one or other, cannot be lawfully diſcharged by any other but by the king, till he be acquitted on his trial, or have an *ignoramus* found by the grand jury, or none to proſecute him on a proclamation for that purpoſe, by the juſtices of gaol delivery. 2 *Hawk. P. C.* 121.

How party committed may be diſcharged.

But if a perſon be committed on a bare ſuſpicion, without any appeal or indictment for a ſuppoſed crime, where afterwards it appears that there

was none; as for the murder of a perſon thought to be dead, who afterwards is found to be alive; it hath been holden that he may be ſafely diſmiſſed, without any farther proceeding; for that he who ſuffers him to eſcape, is properly puniſhable only as an acceſſary, where there can be no principal; and it would be hard to puniſh one for a contempt founded for a ſuſpicion appearing in ſo uncommon a manner to be groundleſs. 2 *Hawk. P. C.* 121.

Common Prayer.

STATUTE 1 *Eliz. c.* 2. [*A. D.* 1558. *Intituled*] *An act for the uniformity of Common prayer, and ſervice in the church, and adminiſtration of the ſacraments.*

13 & 14 Car. 2. c. 4.

" Where at the death of our late ſovereign lord king *Edward* the Sixth, there remained one uniform order of common ſervice and prayer, and of the adminiſtration of ſacraments, rites and ceremonies of the church of *England*, which was ſet forth in one book, intituled, The Book of Common Prayer, and adminiſtration of ſacraments, and other rites and ceremonies in the church of *England*, authorized by act of parliament, holden in the fifth and ſixth years of our ſaid late ſovereign lord king *Edward* the Sixth, intituled, An act for the uniformity of common prayer and adminiſtration of the ſacraments; the which was repealed and taken away by act of parliament in the firſt year of the reign of our late ſovereign lady queen *Mary*, to the great decay of the due honour of God, and diſcomfort to the profeſſors of the truth of Chriſt's religion:

Stat. 5 & 6 Ed. 6. c. 1.

A repeal of the ſtatute of 1 M. Seſſ. 2. c. 2. and the book of Common Prayer ſhall be of effect.

Sect. II. " Be it therefore enacted by the authority of this preſent parliament, That the ſaid eſtatute of repeal, and every thing therein contained, only concerning the ſaid book, and the ſervice, adminiſtration of the ſacraments, rites and ceremonies contained or appointed in or by the ſaid book, ſhall be void and of none effect, from and after the feaſt of the nativity of St. *John Baptiſt* next coming; (2) And that the ſaid book, with the order of ſervice, and of the adminiſtration of ſacraments, rites and ceremonies, with the alterations and additions therein added and appointed by this eſtatute, ſhall ſtand and be from and after the ſaid feaſt of the nativity of St. *John Baptiſt*, in full force and effect, according to the tenor and effect of this eſtatute; any thing in the aforeſaid eſtatute of repeal to the contrary notwithſtanding.

1 Leon. 295.

The book of Common

Sect. 3. " And further be it enacted by the queen's highneſs, with the aſſent of the Lords and commons in this preſent parliament aſſembled,

and

and by the authority of the ſame, That all and ſingular miniſters in any cathedral or pariſh church, or other place within this realm of *England*, *Wales*, and the marches of the ſame, or other the queen's dominions, ſhall from and after the feaſt of the nativity of St. *John Baptiſt* next coming, be bounden to ſay and uſe the mattens, even-ſong, celebration of the Lord's ſupper, and adminiſtration of each of the ſacraments, and all the common and open prayer, in ſuch order and form as is mentioned in the ſaid book ſo authorized by parliament, in the ſaid fifth and ſixth years of the reign of king *Edward* the Sixth, with one alteration or addition of certain leſſons to be uſed on every *Sunday* in the year, and the form of the Litany altered and corrected, and two ſentences only added in the delivery of the ſacrament to the communicants, and none other or otherwiſe.

Prayer ſhall be uſed. 8 Eliz. c. 1.

The alteration of the book ſet forth, 5 & 6 Ed. 6. c. 1.

Sect. 4. "And that if any manner of parſon, vicar, or other whatſoever miniſter, that ought or ſhould ſing or ſay common prayer mentioned in the ſaid book, or miniſter the ſacraments, from and after the feaſt of the nativity of St. *John Baptiſt* next coming, refuſe to uſe the ſaid common prayers, or to miniſter the ſacraments in ſuch cathedral or pariſh church, or other places as he ſhould uſe to miniſter the ſame, in ſuch order and form as they be mentioned and ſet forth in the ſaid book; (2) or ſhall wilfully or obſtinately, ſtanding in the ſame, uſe any other rite, ceremony, order, form or manner of celebrating the Lord's ſupper, openly or privily, or mattens, even-ſong, adminiſtration of the ſacraments, or other open prayers than is mentioned and ſet forth in the ſaid book, (3) *(open prayer in and throughout this act, is meant that prayer which is for others to come unto or hear, either in common churches or private chapels or oratories, commonly called the ſervice of the church,)* (4) or ſhall preach, declare or ſpeak any thing in the derogation or depraving of the ſaid book, or any thing therein contained, or of any part thereof, (5) and ſhall be thereof lawfully convicted, according to the laws of this realm, by verdict of twelve men, or by his own confeſſion, or by the notorious evidence of the fact, ſhall loſe and forfeit to the queen's highneſs, her heirs and ſucceſſors, for his firſt offence, the profit of all his ſpiritual benefices or promotions coming or ariſing in one whole year next after his conviction: (6) And alſo that the perſon ſo convicted, ſhall for the ſame offence ſuffer impriſonment for the ſpace of ſix months, without bail or mainpriſe.

The forfeiture of thoſe which uſe any other ſervice than the book of Common Prayer. Godbolt 118. pl. 137.

3 Mod. 78.

The penalty for depraving the book of Common Prayer.

Sect. 5. "And if any ſuch perſon once convict of any offence, concerning the premiſſes, ſhall after his firſt conviction eftſoons offend, and be thereof in form aforeſaid lawfully convict, that then the ſame perſon ſhall for his ſecond offence ſuffer impriſonment by the ſpace of one whole year, (2) and alſo ſhall therefore be deprived, *ipſo facto*, of all his ſpiritual promotions; (3) and that it ſhall be lawful to all patrons or donors of all and ſingular the ſame ſpiritual promotions, or of any of them, to preſent or collate to the ſame, as though the perſon or perſons ſo offending were dead.

The penalty for the ſecond offence.

Sect.

The penalty for the third offence.

Sect. 6. " And that if any ſuch perſon or perſons, after he ſhall be twice convicted in form aforeſaid, ſhall offend againſt any of the premiſſes the third time, and ſhall be thereof in form aforeſaid lawfully convicted, that then the perſon ſo offending and convicted the third time, ſhall be deprived *ipſo facto*, of all his ſpiritual promotions, and alſo ſhall ſuffer impriſonment during his life.

The penalty of an offender having no ſpiritual promotion.

Sect. 7. " And if the perſon that ſhall offend, and be convicted in form aforeſaid, concerning any of the premiſſes, ſhall not be beneficed, nor have any ſpiritual promotion, that then the ſame perſon ſo offending and convict, ſhall for the firſt offence ſuffer impriſonment during one whole year next after his ſaid conviction, without bail or mainprize.

Sect. 8. " And if any ſuch perſon, not having any ſpiritual promotion, after his firſt conviction ſhall eftſoons offend in any thing concerning the premiſſes, and ſhall in form aforeſaid be thereof lawfully convicted, that then the ſame perſon ſhall for his ſecond offence ſuffer impriſonment during his life.

The forfeiture of them which do any thing, or ſpeak in the derogation of the book of Common Prayer.

Cauſing other prayer to be ſaid or ſung.

Coke pl. ſol. 362.
1 Rol. 95.
1 Mod. 168.

Sect. 9. " And it is ordained and enacted by the authority aforeſaid, That if any perſon or perſons whatſoever, after the ſaid feaſt of the nativity of St. *John Baptiſt* next coming, ſhall in any enterludes, plays, ſongs, rhymes, or by other open words, declare or ſpeak any thing in the derogation, depraving or deſpiſing of the ſame book, or of any thing therein contained, or any part thereof: (2) or ſhall by open fact, deed, or by open threatnings, compel or cauſe, or otherwiſe procure or maintain any parſon, vicar or other miniſter in any cathedral or pariſh church, or in chapel or in any other place, to ſing or ſay any common or open prayer, or to miniſter any ſacrament otherwiſe, or in any other manner and form than is mentioned in the ſaid book; (3) or that by any of the ſaid means ſhall unlawfully interrupt or let any parſon, vicar or other miniſter in any cathedral or pariſh church, chapel, or any other place, to ſing or ſay common and open prayer, or to miniſter the ſacraments, or any of them, in ſuch manner and form, as is mentioned in the ſaid book; (4) that then every ſuch perſon, being thereof lawfully convicted in form aboveſaid, ſhall forfeit to the queen our ſovereign lady, her heirs and ſucceſſors, for the firſt offence an hundred marks.

The forfeiture of an hundred marks for the firſt offence.

The forfeiture of four hundred marks for the ſecond offence.

Sect. 10. " And if any perſon or perſons being once convict of any ſuch offence, eftſoons offend againſt any of the laſt recited offences, and ſhall in form aforeſaid be thereof lawfully convict; that the ſame perſon ſo offending and convict, ſhall for the ſecond offence forfeit to the queen our ſovereign lady, her heirs and ſucceſſors, four hundred marks.

The forfeiture for the third offence.

Sect. 11. " And if any perſon, after he in form aforeſaid ſhall have been twice convict of any offence concerning any of the laſt-recited offences, ſhall offend the third time, and be thereof in form aboveſaid lawfully convict, That then every perſon ſo offending and convict, ſhall for his third offence forfeit to our ſovereign lady the queen, all his goods and chattels, and ſhall ſuffer impriſonment during his life.

The penalty, if the party

Sect. 12. " And if any perſon or perſons, that for his firſt offence concerning the premiſſes ſhall be convict in form aforeſaid, do not pay the ſum

ſum to be paid by virtue of his conviction, in ſuch manner and form as the ſame ought to be paid, within ſix weeks next after his conviction; that then every perſon ſo convict, and ſo not paying the ſame, ſhall for the ſame firſt offence, inſtead of the ſaid ſum, ſuffer impriſonment by the ſpace of ſix months, without bail or mainprize.

Convicted do not pay his forfeiture within the time limited.

Sect. 13. " And if any perſon or perſons, that for his ſecond offence concerning the premiſſes ſhall be convict in form aforeſaid, do not pay the ſaid ſum to be paid by virtue of his conviction and this eſtatute, in ſuch manner and form as the ſame ought to be paid, within ſix weeks next after his ſaid ſecond conviction, That then every perſon ſo convicted, and not paying the ſame, ſhall for the ſame ſecond offence, inſtead of the ſaid ſum, ſuffer impriſonment during twelve months, without bail or mainprize.

Sect. 14. " And that from and after the ſaid feaſt of the nativity of St. *John Baptiſt* next coming, all and every perſon and perſons inhabiting within this realm, or any other the queen's majeſty's dominions, ſhall diligently and faithfully, having no lawful or reaſonable excuſe to be abſent, endeavour themſelves to reſort to their pariſh church or chapel accuſtomed, or upon reaſonable let thereof, to ſome uſual place where common prayer and ſuch ſervice of God ſhall be uſed in ſuch time of let, upon every *Sunday* and other days ordained and uſed to be kept as holy days, and then and there to abide orderly and ſoberly, during the time of the common prayer, preaching, or other ſervice of God there to be uſed and miniſtred; (2) upon pain of puniſhment by the cenſures of the church, and alſo upon pain that every perſon ſo offending ſhall forfeit for every ſuch offence, twelve pence, to be levied by the church-wardens of the pariſh where ſuch offence ſhall be done, to the uſe of the poor of the ſame pariſh, of the goods, lands and tenements of ſuch offender, by way of diſtreſs.

Every perſon ſhall reſort to the church upon the holy days. Godbolt 148. pl. 191. One juſtice may convict the offender, &c. by 3 Jac. 1. c. 4. ſect. 27. 2 Rol. 438, 455. March 93. The forfeiture for not coming to church. 23 Eliz. c. 1. 11 Co. 56. 1 Rol. 89.

Sect. 15. " And for due execution hereof, the queen's moſt excellent majeſty, the lords temporal and all the commons, in this preſent parliament aſſembled, do in God's name earneſtly require and charge all the archbiſhops, biſhops and other ordinaries, that they ſhall endeavour themſelves to the uttermoſt of their knowledges, that the due and true execution hereof may be had throughout their dioceſe and charges, as they will anſwer before God, for ſuch evils and plagues wherewith Almighty God may juſtly puniſh people for neglecting this good and wholeſome law.

Sect. 16. " And for their authority in this behalf, be it further enacted by the authority aforeſaid, That all and ſingular the ſaid archbiſhops, biſhops and all other their officers exerciſing eccleſiaſtical juriſdiction, as well in place exempt as not exempt, within their dioceſs, ſhall have full power and authority by this act, to reform, correct and puniſh by cenſures of the church, all and ſingular perſons which ſhall offend within any their juriſdictions or dioceſs, after the ſaid feaſt of the nativity of St. *John Baptiſt* next coming, againſt this act and ſtatute; any other law, ſtatute

The ordinary may puniſh offenders by the cenſures of the church.

tute, privilege, liberty or proviſion heretofore made, had or ſuffered to the contrary notwithſtanding.

Which juſtices may puniſh theſe offences.

Sect. 17. "And it is ordained and enacted by the authority aforeſaid, That all and every juſtices of *Oyer* and *Determiner*, or juſtices of aſſize, ſhall have full power and authority in every of their open and general ſeſſions, to enquire, hear and determine all and all manner of offences that ſhall be committed or done contrary to any article contained in this preſent act, within the limits of the commiſſion to them directed, and to make proceſs for the execution of the ſame, as they may do againſt any perſon being indicted before them of treſpaſs, or lawfully convicted thereof.

A biſhop may join with the juſtices to enquire of offenders.

Sect. 18. "Provided always, and be it enacted by the authority aforeſaid, That all and every archbiſhop and biſhop, ſhall or may at all time and times, at his liberty and pleaſure, join and aſſociate himſelf, by virtue of this act, to the ſaid juſtices of *Oyer* and *Determiner*, or to the ſaid juſtices of aſſize, at every of the ſaid open and general ſeſſions to be holden in any place within his dioceſs, for and to the enquiry, hearing and determining of the offences aforeſaid.

At whoſe charges the books of Common Prayer ſhall be gotten.

Sect. 19. "Provided alſo, and be it enacted by the authority aforeſaid, That the books concerning the ſaid ſervices ſhall, at the coſts and charges of the pariſhioners of every pariſh and cathedral church, be attained and gotten before the ſaid feaſt of the nativity of St. *John Baptiſt* next following; (2) and that all ſuch pariſhes and cathedral churches, or other places, where the ſaid books ſhall be attained and gotten before the ſaid feaſt of the nativity of St. *John Baptiſt*, ſhall, within three weeks next after the ſaid books ſo attained and gotten, uſe the ſaid ſervice, and put the ſame in uſe according to this act.

Within what time offenders ſhall be impeached. Godbolt 148. pl. 191.

Sect. 20. "And be it further enacted by the authority aforeſaid, That no perſon or perſons ſhall be any time hereafter impeached or otherwiſe moleſted of or for any of the offences above-mentioned, hereafter to be committed or done contrary to this act, unleſs he or they ſo offending be thereof indicted at the next general ſeſſions to be holden before any ſuch juſtices of *Oyer* and *Determiner*, or Juſtices of aſſize, next after any offence committed or done contrary to the tenor of this act.

Trial of peers.

Sect. 21. "Provided always, and be it ordained and enacted by the authority aforeſaid, That all and ſingular lords of the parliament, for the third offence above-mentioned, ſhall be tried by their peers.

Chief officers of cities and boroughs ſhall enquire of offenders.

Sect. 22. "Provided alſo, and be it ordained and enacted by the authority aforeſaid, That the mayor of *London*, and all other mayors, bailiffs and other head officers of all and ſingular cities, boroughs and towns corporate within this realm, *Wales*, and the marches of the ſame, to the which juſtices of aſſize do not commonly repair, ſhall have full power and authority by virtue of this act, to enquire, hear and determine the offences aboveſaid, and every of them, yearly within fifteen days after the feaſt of *Eaſter*, and St. *Michael* the archangel, in like manner and form as juſtices of aſſize, and *Oyer* and *Determiner* may do.

The ordinary's juriſdiction in theſe caſes.

Sect. 23. "Provided always, and be it ordained and enacted by the authority aforeſaid, That all and ſigular archbiſhops and biſhops, and every

every of their chancellors, commiſſaries, archdeacons, and other ordinaries, having any peculiar eccleſiaſtical juriſdiction, ſhall have full power and authority by virtue of this act, as well to enquire in their viſitation, ſynods, and elſewhere within their juriſdiction, at any other time and place, to take accuſations and informations of all and every the things above-mentioned, done, committed, or perpetrated within the limits of their juriſdictions and authority, and to puniſh the ſame by admonition, excommunication, ſequeſtration or deprivation, and other cenſures and proceſs in like form, as heretofore hath been uſed in like caſes by the queen's eccleſiaſtical laws."

Sect. 24. "Provided always, and be it enacted, That whatſoever perſons offending in the premiſſes, ſhall for their offences firſt receive puniſhment of the ordinary, having a teſtimonial thereof under the ſaid ordinary's ſeal, ſhall not for the ſame offence eftſoons be convicted before the juſtices: (2) and likewiſe receiving for the ſaid offence, puniſhment firſt by the juſtices, ſhall not for the ſame offence eftſoons receive puniſhment of the ordinary; any thing contained in this act to the contrary notwithſtanding." None ſhall be puniſhed above once for one offence.

Sect. 25. "Provided always, and be it enacted, That ſuch ornaments of the church and of the miniſters thereof, ſhall be retained and be uſed, as was in this church of *England*, by authority of parliament, in the ſecond year of the reign of king *Edward* the ſixth, until other order ſhall be therein taken by the authority of the queen's majeſty, with the advice of her commiſſioners appointed and authorized under the great ſeal of *England* for cauſes eccleſiaſtical, or of the metropolitan of this realm." Ornaments of the church and miniſters.

Sect. 26. "And alſo that if there ſhall happen any contempt or irreverence to be uſed in the ceremonies or rites of the church, by the miſ-uſing of the orders appointed in this book, the queen's majeſty may, by the like advice of the ſaid commiſſioners or metropolitan, ordain and publiſh ſuch further ceremonies or rites as may be moſt for the advancement of *God*'s glory, the edifying of his church, and due reverence of *Chriſt*'s holy myſteries and ſacraments."

Sect. 27. "And be it further enacted by the authority aforeſaid, That all laws, ſtatutes and ordinances, wherein or whereby any other ſervice, adminiſtration of ſacraments or common prayer, is limited, eſtabliſhed, or ſet forth to be uſed within this realm, or any other the queen's dominions or countries ſhall from henceforth be utterly void and of none effect. *Made perpetual by* 5 *Annæ*, *c.* 5. *as to the eſtabliſhment of the church.*" All laws and ordinances made for other ſervice, ſhall be void.

Stat. 13 & 14 *Car.* 2. *c.* 4. [*A. D.* 1662.] *made among other purpoſes*, "for the uniformity of publick prayers, and adminiſtration of ſacraments, and other rites and ceremonies."

Sect. 7. "And be it further enacted by the authority aforeſaid, That in all places where the proper incumbent of any parſonage, or vicarage, or benefice with cure, doth reſide on his living, and keep a curate, the Incumbents of livings, keeping curates, ſhall read the common

prayer once every month.

the incumbent himſelf in perſon (not having ſome lawful impediment to be allowed by the ordinary of the place) ſhall once (at the leaſt) in every month, openly and publickly, read the common prayers and ſervice in and by the ſaid book preſcribed, and (if there be occaſion) adminiſter each of the ſacraments, and other rites of the church, in the pariſh church or chapel, of, or belonging to the ſame parſonage, vicarage or benefice, in ſuch order, manner and form, as in and by the ſaid book is appointed;

The penalty and manner of conviction for not doing it.

(2) upon pain to forfeit the ſum of five pounds to the uſe of the poor of the pariſh for every offence, upon conviction by confeſſion, or proof of two credible witneſſes upon oath, before two juſtices of the peace of the county, city or town corporate where the offence ſhall be committed, (which oath the ſaid juſtices are hereby impowered to adminiſter); and in default of payment within ten days, to be levied by diſtreſs and ſale of the goods and chattels of the offender, by the warrant of the ſaid juſtices, by the churchwardens, or overſeers of the poor of the ſaid pariſh, rendering the ſurpluſage to the party.[2]

Confeſſion.

CONFESSION, is when a priſoner is appealed or indicted of treaſon or felony, and brought to the bar to be arraigned, and his indictment is read unto him; and the court demands what he can ſay thereto; then either he *confeſſes* the *offence*, and the indictment to be true, or pleads *Not guilty*, or elſe gives an indirect anſwer, and ſo in effect ſtands mute. *Confeſſion* may be made in two ſorts, and to two ſeveral ends. The one is, he may *confeſs* the *offence* whereof he is indicted openly in the court, before the judge, and ſubmit himſelf to the cenſure and judgment of the law, which *confeſſion* is the moſt certain anſwer and beſt ſatisfaction that may be given to the judge to condemn the *offender*; ſo that it proceeds freely of his own accord, without any threats, force or extremity uſed. For if the *confeſſion* ariſe from any of theſe cauſes, it ought not to be recorded. As if a woman was indicted for the felonious taking of bread to the value of two ſhillings, and being thereof arraigned, ſhe *confeſt* the felony, and ſaid, That ſhe did it by the commandment of her huſband; and the judges, in pity, would not record her *confeſſion*, but cauſed her to plead *Not guilty* to the felony; whereupon the jury found that ſhe ſtole the bread by compulſion of the huſband againſt her will, for which cauſe ſhe was diſcharged. 27 *Aſſiſ. pl.* 50. The other kind of *confeſſion* is, when a priſoner *confeſſes* the indictment to be true, and that he committed the *offence* whereof he is indicted,

indicted, and then becomes an approver, that is, an accuſer of others, who have committed the ſame *offence* whereof he is indicted, or offences with him; and then prays the judge to have a coroner aſſigned him, to whom he may make relation of thoſe offences, and the full circumſtances thereof. There is alſo a third kind of *confeſſion* made by an *offender* in felony, which is not in court before the judge, as the other two are; but before a coroner in a church, or other privileged place, upon which the *offender*, by the ancient law of the realm was to abjure. *Cowell, edit.* 1727.

Confeſſion, according to ſome writers is twofold, either *expreſs* or *implied.*

An *expreſs* confeſſion is, where a perſon directly confeſſes the crime with which he is charged, which is the higheſt conviction that can be. 2 *Haw.* 333.

But it is uſual for the court, eſpecially if it be out of clergy, to adviſe the party to plead and put himſelf upon his trial, and not preſently to record his confeſſion, but to admit him to plead. 2 *H. H.* 225.

An *implied* confeſſion is, where a defendant in a caſe not capital, doth not directly own himſelf guilty, but in a manner admits it by yielding to the king's mercy, and deſiring to ſubmit to a ſmall fine; which ſubmiſſion the court may accept of if they think fit, whithout putting him to a direct confeſſion. 2 *Haw.* 233.

It ſeems that the confeſſion of the defendant, taken upon examination before juſtices of the peace, or in diſcourſe with private perſons, may be given in evidence againſt the party confeſſing, but not againſt others. 2 *Haw.* 429.

All thoſe who on their examination own themſelves guilty of a felony alledged againſt them, and are charged in their *mittimus* with the felony ſo confeſſed, ſeem to be excluded from bail; for bail is only proper where it ſtands indifferent whether the party be guilty or innocent. 2 *Haw.* 97.

Conſpiracy.

CONSPIRACY, notwithſtanding that in *Latin* and *French* it is uſed for an agreement of men to do a good or evil thing, yet it is commonly taken in our law in the evil part; and is defined in *Stat.* 33 *Ed.* 1. *ſt.* 2. in which Statute it is confounded with *maintenance* and *champerty*; but in a more ſpecial ſignification it is taken for a confederacy between two or more, falſly to indict one, or to procure one to be indicted of felony. *Termes de la ley.*

By the common law there can be no doubt, but that all confederacies whatſoever, wrongfully to prejudice a third perſon, are highly criminal; as where divers perſons confederate together by indirect means to impoveriſh a third perſon, or falſely and maliciouſly to charge a man with being the reputed father of a baſtard child, or to maintain one another in any matter whether it be true or falſe. 1 *Haw.* 190.

Stat. 33 *Ed.* 1. *ſt.* 2. [*A. D.* 1304. *Intituled*] *A definition of* conſpirators, *made Anno* 33 *Edw.* 1. *ſtat.* 2. and *A. D.* 1304. "Who be conſpirators, and who be champertors."

20 H. 7. f. 11. Fitz Barre, 4. Kel. 81. Fitz. Conſp. 2. 4, 5, 10, 13, 14, 15, 16, 19, 21, 22, 25. 8 Co. 37. V. N. B. 56. F. N. B. 117. H. Raſt. 122. 2 Inſt. 562. 3 Inſt. 143.

"Conſpirators be they that do confeder or bind themſelves by oath, covenant, or other alliance, that every of them ſhall aid and bear the other falſely and maliciouſly to indite, or cauſe to indite, (2) or falſly to move or maintain pleas; (3) and alſo ſuch as cauſe children within age to appeal men of felony, whereby they are impriſoned and ſore grieved; (4) and ſuch as retain men in the country with liveries or fees for to maintain their malicious enterpriſes; and this extendeth as well to the takers as to the givers. (5) And ſtewards and bailiffs of great lords, which by their feignory, office, or power, undertake to bear or maintain quarrels, pleas, or debates that concern other parties than ſuch as touch the eſtate of their lords or themſelves. (6) This ordinance and final definition of conſpirators was made and accorded by the king and his council in his parliament the thirty-third year of his reign. (7) And it was further ordained, that juſtices aſſigned to the hearing and determining of felonies and treſpaſſes, ſhould have the tranſcript hereof. (8) Champertors be they that move pleas and ſuits, or cauſe to be moved either by their own procurement, or by others, and ſue them at their proper coſts for to have part of the land in variance, or part of the gains.

Who be champertors.

From this definition of conſpirators it ſeems clearly to follow, contrary to the opinion of lord *Coke*, that not only thoſe who actually cauſe an innocent man to be indicted, and alſo to be tried upon the indictment, whereupon he is lawfully acquitted, are properly conſpirators, but that thoſe alſo are guilty of this offence, who barely conſpire to indict a man falſely and maliciouſly, whether they do any act in proſecution of ſuch conſpiracy or not. 1 *Haw.* 189. Lord *Raym.* 1169.

But an *action* will not lie for the conſpiracy, unleſs it be put in execution, for in ſuch caſe the *damage* is the ground of the action. Lord *Raym.* 378.

Alſo it plainly appears from the words of the ſtatute, that one perſon alone cannot be guilty of a conſpiracy, within the purport of it; from whence it follows, that if all the defendants who are proſecuted for ſuch a conſpiracy be acquitted but one, the acquittal of the reſt, is the acquittal of that one alſo: And upon the ſame ground it hath been holden, that no ſuch proſecution is maintainable againſt a huſband and wife only, becauſe they are eſteemed but as one perſon in law: But it is certain that an action on the caſe, in the nature of a conſpiracy, may be brought againſt one

only: Alſo, it hath been reſolved, that if ſuch an action be brought againſt ſeveral perſons, and all but one be acquitted, yet judgment may be given againſt that one only. 1 *Haw.* 192.

What is evidence of a conſpiracy. 1 Srran. 144. Hil. 5 Geo. 1. Rex v. Cope et al'.

The huſband and wife and ſervants were indicted for a conſpiracy to ruin the trade of the proſecutor, who was the king's card-maker. The evidence againſt them was, that they had at ſeveral times given money to the proſecutor's apprentices to put greaſe into the paſte, which had ſpoiled the cards. But there was no account given, that ever more than one at a time were preſent, though it was proved they had all given money in their turns. It was objected, that this could not be a conſpiracy, for two men might do the ſame thing without having any previous communication with one another. But the chief juſtice ruled, that the defendants being all of a family, and concerned in making cards; it would amount to evidence of a conſpiracy, and directed the jury accordingly.

One conſpirator may be convicted after the other is dead. 2 Stran. 1227. Eaſt. 18 Geo. 2. Rex v. Elizabeth Niccholls.

She was indicted at *Hicks's-hall*, for conſpiring with *Edward Bygrave*, unjuſtly to charge *William Frankland* with a robbery, and for that purpoſe going before a juſtice of peace, where *Bygrave* ſwore it upon him; *Niccholls* only came in and pleaded Not guilty. And the jury found that ſhe was guilty, but that *Bygrave* died before the indictment was preferred. But before any judgment was given at the ſeſſions, ſhe brought a *certiorari*, and the cauſe was ſet down to be argued. The firſt thing determined was, that this being in the nature of a ſpecial verdict, there was no occaſion for the defendant appearing in court upon the argument, for ſhe is not conſidered as convicted, till after the court have determined upon the verdict. And it was therefore not within the reaſon of the caſe of moving for a new trial, or in arreſt of judgment, where there being a general verdict, it created ſuch a preſumption of guilt, that the party cannot move, without being preſent in court. It then came on upon the merits; when exception was taken, that one alone cannot be guilty of a conſpiracy, and here is but one convicted; but the court over-ruled this on the authority of *Kinnerſly*'s caſe where judgment was given againſt him before the other had pleaded; ſo that there was a poſſibility of contradictory verdicts, which cannot be here. And I cited 1 *Vent.* 234. 24 *Ed.* 3. 34. *b.* 24 *Ed.* 3. 73. *a* in point. But then a doubt aroſe, what the court could do, the *certiorari* being brought before judgment. And this court, not being apprized of the circumſtances of the offence, could not tell what judgment to give: and in *Carth.* 6. it is ſaid, they cannot give judgment. A rule therefore was made to ſhew cauſe why the *certiorari* ſhould not be quaſhed, ſo as to remit it back to the ſeſſions; which was afterwards made abſolute.

Conſpiracy may be laid without any Overt act, and if one be convicted, judgment ſhall be given againſt him before the trial of the

Information, ſetting forth, that the defendants *Kinnerſley* and *Moore* being evil diſpoſed perſons, in order to extort money from my lord *Sunderland* did conſpire together to charge my lord with endeavouring to commit *Sodomy* with the ſaid *Moore*; and that in execution of this conſpiracy, they did in the preſence and hearing of ſeveral perſons falſely and maliciouſly accuſe my lord that he *conatus fuit rem habere* with the defendant *Moore*, and to commit ſodomy. The defendant *Kinnerſly* only appears, and

other. 1 Stran. 193. Trin. 5 Geo. 1. Rex v. Kinnerſely and Moore.

and pleads to iſſue, and is found guilty, and now ſeveral exceptions were taken in arreſt of judgment.

Branthwayte ſerjeant: The nature of the offence muſt appear upon the record, for by that only the court muſt judge, and the offence muſt be particularly and certainly alledged. *Conatus fuit* is incertain, for it might only be an act of the mind which before it was put in execution was ſuppreſed by reaſon. 1 *Roll. Rep.* 79. 2 *Bulſt.* 276. In an action for words, *per quod maritagium amiſit*, the plaintiff declared, that whereas he *intendebat et conatus fuit* to marry ſuch a woman, the plaintiff ſpoke of him ſuch words *per quod, &c.* and this was held to be incertain and the judgment was arreſted.

2. It ſhould appear upon the record, that the party accuſed is innocent; for it is no crime to charge a guilty perſon with ſuch an offence. They ſhould have averred, *ubi revera et in facto* he *non conatus fuit* to do the act with which he was charged. *Hut.* 11, 49. In actions for a malicious proſecution, the plaintiff muſt ſhew the former action to be determined, and how; ſo likewiſe he muſt ſhew an acquittal upon an indictment. 1 *Keb.* 881.

3. "To every conſpiracy there muſt be two perſons at leaſt; whereas here is only one brought in and found guilty. If hereafter the other ſhould be found Not guilty, that will conſequently be an acquittal of *Kinnerſley*. If three be indicted for a riot and an aſſault, and one only found guilty, and the others acquitted; this diſcharges them all, becauſe the riot is the foundation, and the aſſault only the conſequence. *Salk.* 593. And one perſon alone cannot be guilty of committing a riot: So in this caſe one cannot be guilty of the conſpiracy, though he may of the overt act; and yet the foundation (which is the conſpiracy) being removed, the other part, which is only the conſequence, falls of courſe.

Comyns: Bare words are not a ſufficient overt act, without alledging ſomething actually done towards putting the conſpiracy in execution, 4 *Co.* 16. *a.* 1 *Roll. Abr.* 110. *p.* 6. 9 *Co.* 56. *b.* For if there be only words, an action of *ſcandalum magnatum* lies. If the charge on my lord was by courſe of law, then the defendants are juſtified, till it is falſified in a legal manner, either by *ignoramus* or acquittal. 1 *Rol. Abr.* 113, 114. *R.* 2. And the court will not ſuffer the party accuſed to bring his action, till he has manifeſted his innocence; becauſe otherwiſe there might be contradictory judgments, for the parties might be condemned in an action for that proſecution, which they might afterwards eſtabliſh; and then theſe two judgments would be inconſiſtent. 3 *Keb.* 799.

The offence with which my lord is charged is no crime puniſhable by our law: For a bare endeavour (which is the moſt that is alledged) to do ſuch an act, is not puniſhable in the temporal courts. And the only reaſon why it is actionable, to ſay of a woman that ſhe had a baſtard, is, becauſe ſhe is puniſhable for it by 18 *Eliz. c.* 3. and 7 *Jac.* 1. *c.* 4. *Poph.* 36. Nor is it actionable then, unleſs it appears the pariſh was charged. *Salk.* 694. So to ſay ſhe keeps a bawdy-houſe, becauſe the common law puniſhes a perſon. *Cro. Car.* 329. And yet it is not actionable to

call

call a woman a bawd, which is only an offence cognizable in the ſpiritual court. 1 *Ven.* 53.

If *Moore* ſhould die, be pardoned, or acquitted, how can the other be guilty of a conſpiracy? *Cro. El.* 701. 1 *Ven.* 234. 3 *Keb.* 111. 1 *Saund.* 228. 2 *Keb.* 476. 1 *Keb.* 284. 1 *Rol. Abr.* 111. *pl.* 5.

Adjournatur; and at another day *Reeve* in anſwer to the objections argued.

1. As to the *conatus* being uncertain. This goes to their own charge; from which we would not vary, but were obliged to lay it as we could prove it. We could not lay, that he ſaid my lord did the act, when he only ſaid he endeavoured to do it. The caſe in 1 *Rol. Rep.* 79. and 2 *Bulſt.* 276. is not applicable to this. There it was in the plaintiff's power to have been more particular, and the words were not actionable without a ſpecial damage: he ſhould have ſhewn a treaty and communication between himſelf and the lady; whereas he only ſays he intended and went about to marry her, and it does not ſo much as appear ſhe knew any thing of the matter. In many caſes it is actionable to charge a man with a bare attempt to do an unlawful act. *Cro. El.* 6. You lay in wait *intending* to murder *A.* You laid gunpowder under my window *minding* to burn my houſe. *Cro. El.* 191. You agreed to hire a man to kill me. 2 *Lev.* 205. 1 *Ven.* 323. In actions for words the plaintiff may make his own caſe; but we were obliged to follow the defendant, and lay the overt act as it was. If an indictment be imperfect, yet if it be recited in an action as it is, it will be ſufficient. 47 *El.* 3. 16, 17.

2. They object, here is no overt act. Is not the affirmation one? Surely it is. But if it be not, yet we inſiſt there was no occaſion to lay any. The conſpiracy is the *git* of the charge, and the other only matter of aggravation, of which the defendant may be acquitted, and found guilty of the conſpiracy notwithſtanding. 1 *Ven.* 304. 1 *Sid.* 174. 1 *Lev.* 125. So 1 *Lev.* 62. 1 *Keb.* 203, 254. A conſpiracy to charge a man with being the father of a baſtard child was held well laid, without any overt act. 27 *Aſſ. pl.* 44. 16 *Aſſ. pl.* 62. There were differences in opinion as to this matter formerly, but now the law is ſettled.

3. Say they, no judgment ſhall be given againſt *Kinnerſley*, becauſe poſſibly *Moore* may be acquitted, and that will be an acquittal of both. This is arguing from what has not happened, and probably never will; for though *Moore* may have an opportunity to acquit himſelf, and is not concluded by the verdict as *Kinnerſley* is; yet as the matter now ſtands, *Moore* himſelf is found guilty; for the conſpiracy is found as it is laid, and therefore judgment may be given againſt one before the trial of the other. As 4 *E.* 3. 34. *b.* *Bro. Conſpiracy* 21. 1 *Ven.* 234. 3 *Keb.* 111. 24 *E.* 3. 73. *a.* *Paſ.* 7 *Ann. B. R. Regina v. Herne.* There the indictment was, that he with *A. et multis aliis*, did conſpire to accuſe *B.* that *he did attempt* to commit ſodomy. The grand jury found the bill as to *Herne*, with an *ignoramus* as to *A.* *Herne* was convicted, and then it was moved in arreſt of judgment, that there being an *ignoramus* as to *A. Herne* could not be guilty of conſpiring with him. But the whole court over-ruled the exception,

exception, and ſaid it was ſufficient, being found that he, *cum multis aliis*, did conſpire, and that it might have been laid ſo at firſt; and *Herne* was fined forty marks, and ſet in the pillory. My lord chief juſtice of the common pleas, that now is, was of counſel in that caſe; and he quoted a caſe where ſeveral were indicted for a riot, *cum multis aliis*, two only were found guilty; and it was objected, that there muſt be three to make a riot; but upon the *cum multis aliis*, judgment was given againſt the defendant.

4. Another exception is, that we have not averred that my lord is innocent of the fact charged upon him; it is expreſsly laid, that the defendants did *falſly* charge, which could not be, if the accuſation was true. *Trin.* 4 *Ann. Regina* v. *Beſt*, *Salk.* 174, 376. indictment ſetting forth, that the defendants *falſo conſpiraverunt* to charge *A.* with being the father of a baſtard child. On demurrer the exception was, that there was no averment that *A.* was not the father; and upon great conſideration and ſearch of precedents, the indictment was held good. A difference was taken in an indictment for perjury, where you muſt aver the oath falſe; and alſo in actions for a malicious proſecution, where it muſt appear the party was innocent, to intitle him to damages. *F. N. B.* 114, 115. *Raſt.* 117.

5. The laſt exception is, that the offence charged is not puniſhable in the temporal courts. We deny that. Attempts of this nature have been puniſhed, and ſo have conſpiracies to do a lawful act, which is ſtronger than this caſe.

The whole court were unanimous in over-ruling all the exceptions: And *Powys* J. quoted a caſe in *Godb.* where a man was puniſhed for an attempt to pick a pocket. And *Eyre* J. remembered captain *Rigby*, who was pilloried for *an attempt* to commit ſodomy. And he quoted *Trin.* 11 *W.* 3. *Rex* v. *Sudbury & al'*, where four were indicted for a riot, two found guilty, and the other two acquitted; and this was held to be a diſcharge of them all, though it had been otherwiſe if it had been laid *cum multis aliis*. And *Hill.* 2 *Ann. Rot.* 17. is a caſe to the ſame purpoſe as the *Queen* and *Beſt*. *Et per Forteſcue* J. *falſis allegantiis* is in the commiſſion of *Oyer* and *Terminer*. And *Holt* chief juſtice held in *Beſt*'s caſe, that an attempt to do an act cognizable in the ſpiritual court was puniſhable here. *In foro conſcientiæ* the attempt is equal with the execution of it, and there is a great difference between being found Not guilty and not being found guilty. Whereupon judgment was given for the king; and afterwards the court proceeded to ſentence, and told the defendant, nothing but his being a clergyman protected him from a corporal puniſhment. They fined him 500*l.* a year's impriſonment, and to find ſureties for his good behaviour for ſeven years. In *Eaſter* term, 5 *Geo. Moore* was convicted and ſentenced to ſtand in the pillory, ſuffer a year's impriſonment, and to find ſureties for ſeven years. And this term *Kinnerſley*, on affidavits of his being indiſpoſed, moved the court that he might be admitted to the benefit of the rules. *Sed per curiam*, We never do it for one in execution, which differs from the caſe of perſons committed for high treaſon, who have been bailed on account of illneſs.

Indict-

Indictment for conſpiracy to indict for a capital offence was laid, "That the defendants did wickedly and maliciouſly (omitting the word *falſly*) conſpire to indict and cauſe to be indicted *W. G.* for a crime or offence (omitting to ſpecify *what* crime) liable by the laws of this kingdom to be puniſhed capitally: And that they, according to the conſpiracy aforeſaid between them as aforeſaid before had, did afterwards falſly, wickedly and maliciouſly indict him, *&c.*" ſpecifying the very indictment itſelf; which appeared to be for a capital crime. This is a good indictment; although the word *falſly* is not added to the firſt charge of the conſpiring, nor the particular crime there ſpecified: And although it is not laid that the ſaid *W. G.* was *acquitted* of it. See the following caſe.

Indictment for a conſpiracy good, tho' the word *falſly* is omitted in the *firſt* charge of the conſpiring.

The defendants had been convicted of a *conſpiracy* to charge a perſon with a *capital* felony; and the *record* of conviction had been removed up hither by *certiorari*; but *not* the perſons of the defendants. And Mr. Serjeant *Davy* being ready, on behalf of the defendants, to move *in arreſt of judgment*, Mr. *Gould*, *pro Rege*, objected to his going on with the motion; for that the defendants ought to be perſonally preſent. And he cited the caſe of *Rex* v. *Elizabeth Niccholls*, (2 *Strange* 1227.) which was exactly the ſame offence as this; and it was agreed "That *after conviction*, the perſonal preſence of the defendant is neceſſary upon ſuch a motion as this." Serjeant *Davy*, for the defendants, attempted to explain away this rule; and urged that the defendants were ſafe in cuſtody already, and therefore amenable to the juſtice of the court; and offered that the defendant's clerk in court ſhould undertake to bring the defendants up, at the defendants own expence, in caſe the objection ſhould not prevail. But the ſecondary of the crown-office being applied to, alledged "That the rule was as Mr. *Gould* had aſſerted." The court held this to be a fixed and invariable rule of practice in this court, "That the defendants muſt, *after conviction* of ſuch an offence as this, *be preſent in court*, if they would move in arreſt of judgment." Serjeant *Davy* finding the opinion of the court, and the allegation of the ſecondary of the crown-office to be ſo directly againſt him, as to the abſolute neceſſity of the *perſonal preſence* of the defendants, prayed a *habeas corpus* to bring up their bodies; which was granted: And he afterwards renewed his motion, and had the defendants in court. Note—This caſe of a conviction differs from that of a ſpecial verdict, where the preſumption of innocence may be ſuppoſed to *continue*, and therefore the perſonal preſence of the defendant is *not* neceſſary at the argument of it.

2 Bur Rep. 930. Hil. 33 Geo 2. Rex v Spragg and another.

Afterwards in *Eaſter* Term, the defendants (who were father and daughter) being in court, it appeared that they had been convicted of a CONSPIRACY, upon the following indictment; That *John Spragg* of, *&c.* mill-wright, and *Mary-Elizabeth Spragg* of, *&c.* ſingle woman, being perſons of an evil mind and wicked diſpoſition, and deviſing and intending to deprive one *Walter Gilmore* of his good name, credit and reputation; and alſo to ſubject the ſaid *Walter Gilmore*, without any juſt cauſe, to the *loſs of his* LIFE, and forfeiture of his goods and chattels, lands and tenements, upon the 31ſt day of *July* in the 30th year of the reign of our

2 Bur. Rep. 993.

Lord *George* the Second, king of *Great Britain*, and ſo forth, and at divers other times and days theretofore, at *New Sarum* in the county of *Wilts*, and at divers other places within the county aforeſaid, *wickedly* and *malicioufly* did CONSPIRE, combine and agree among themſelves, *to indict and cauſe to be indicted* the ſaid *Walter Gilmore*, for a crime or offence liable by the laws of this kingdom to be puniſhed *capitally*, and to proſecute the ſaid *Walter Gilmore* upon ſuch indictment. And the jurors aforeſaid, upon their oath aforeſaid, *alſo preſent*, That the ſaid *John Spragg* and *Mary-Elizabeth Spragg*, according to the conſpiracy, *combination and agreement* aforeſaid *between them as aforeſaid* before had, afterwards, to wit, on the ſaid thirty-firſt day of *July* in the ſaid thirtieth year of the reign of our ſaid now lord the king, at the ſeſſion of *Oyer* and *Terminer* of our ſaid lord the king, then holden at *New Sarum* aforeſaid in and for the ſaid county of *Wilts*, before the honourable Sir *Richard Adams* knight, one of the barons of his majeſty's court of Exchequer, *Edward Willes* one of his ſaid majeſty's ſerjeants at law, and others their fellows, juſtices of our ſaid lord the king, aſſigned by letters patent of our ſaid lord the king under the great ſeal of *Great Britain* [*prout* in the ſaid letters patent commiſſioning them to hear and determine] by the oath of [naming the grand jury] good and lawful men of the county aforeſaid, then and there ſworn and charged to enquire for our ſaid lord the king for the body of the ſaid county, falſly, *wickedly* and *malicioufly*, and without any reaſonable or probable cauſe, *did indict* and cauſe to be indicted the aforeſaid *Walter Gilmore*, by the name of *Walter Gilmore* late of the borough and town of *Marlborough* in the county of *Wilts*, bookſeller and ſtationer, for that he unlawfully and unjuſtly deviſing and fraudulently intending to get and obtain to himſelf unjuſt lucre, and to defraud our preſent ſovereign lord king *George* of certain duties, granted by certain ſtatutes lately made and provided, and payable to our ſaid lord the king, and to diminiſh the public revenue in this behalf, after the making the ſtatutes in ſuch caſe lately made and provided; and after the ſecond day of *Auguſt* in the year of our Lord one thouſand ſeven hundred and twenty-ſix, that is to ſay, on the third day of *May* in the twenty-ninth of the reign of our ſovereign lord *George* the Second, by the grace of God of *Great Britain*, *France* and *Ireland* king, defender of the faith, at the borough and town aforeſaid in the county aforeſaid, by force and arms, unlawfully, knowingly, fraudulently and felonioufly did counterfeit and forge a ſtamp, to reſemble a certain ſtamp which had before been there duly provided, made and publiſhed in purſuance of the ſtatutes in ſuch caſe made and provided, and which was then and there uſed in purſuance of the ſaid ſtatutes, to ſtamp vellum, parchment and paper charged, by virtue of the ſaid ſtatutes in ſuch caſe made and provided, with the payment to our ſaid now lord the king, of the duties of ſixpence and ſixpence, thereby then and there to defraud our now ſaid lord the king of the duties of ſixpence and ſixpence, granted by the ſtatutes in that behalf lately made and provided, and then payable to our now ſaid lord the king; againſt the form of the ſtatutes in ſuch caſe made and provided, and againſt the peace of our ſaid now lord the

the king, his crown and dignity. And alſo [laying, by another count, the counterfeiting the two ſtamps, by the ſaid *Gilmore*, another way:] And alſo that [it then goes on, and charges that they indicted *Gilmore* with *knowingly* uttering two ſuch counterfeit ſixpenny ſtamps.] And that the ſaid *Gilmore*—[laying the *uttering* them another way.] And that the ſaid *Gilmore*—[Then follow other counts laid by them againſt him, for counterfeiting and knowingly uttering *treble ſixpenny* ſtamps.]

The *preſent defendants*, *Spragg* and his daughter, were convicted at the aſſizes, upon this *indictment for the conſpiracy*, laid in the manner juſt mentioned. However, no judgment was there given; but it was adjourned at the firſt and alſo at the ſubſequent aſſizes, "quia curia nondum adviſatur." The *record* of this conviction was at firſt removed, without *their perſons*: For which reaſon the former motion could not proceed. But this omiſſion was afterwards rectified: The record was removed by *certiorari*; and the defendants were alſo *brought up by habeas corpus*. Whereupon, on *Saturday* 26th *April* 1760, Mr. Serjeant *Davy* moved for the opinion of *this* court; or (in effect) in *arreſt of judgment*, (the defendants being *preſent* in court.) He made two objections; *viz.* 1ſt, It is alledged *in the charge itſelf*, "That the defendants conſpired falſly to indict *Gilmore*." 2dly, Nor does it appear *in the ſaid charge*, *of what particular crime or offence* they conſpired to indict him. 'Tis only charged in *general*, "That "they did wickedly and maliciouſly (without adding *falſly*) conſpire to "indict and proſecute him for a crime or offence liable to be capitally "puniſhed by the laws of this kingdom." Both theſe matters are *eſſentially neceſſary*, and *cannot be ſupplied* by any thing that goes before or comes after.

Firſt point. Conſpirators are thoſe only who confederate themſelves falſly and maliciouſly to indict, or cauſe to indict. The ſtatute of *33 Ed.* 1. (intitled "A definition of conſpirators") defines conſpirators in theſe very terms. 1 *Hawk. P. C.* 189. 2 *Inſt.* 562. *Regiſter* 134. *a. b.* 135. accordingly, *F. N. B.* title *Writ of Conſpiracy*, folio 114, in old edit. (260 in *Hale*'s edit.) accordingly. So *Raſtal*'s Entries 123 to 127, title *Conſpiracy*. So *Co. Entries* 109. tit. *Conſpiracy*. And *Pulton* 232 *a.* 233. *b.* but particularly 232. *b.* title, *Writ of Conſpiracy*. So likewiſe it is ſaid by Juſtice *Richardſon*, in *Tailor* and *Towlin*'s caſe, *Godbolt* 444. All theſe authorities prove that the words "falſly and *maliciouſly*" are neceſſary even in a *count*. *Hale's Hiſt. P. C.* 2d vol. p. 183. ſays, "That the ſame certainty is required in an *in*"*dictment* for goods, as in treſpaſs for goods; and that certainty is much "more neceſſary in an *indictment* than in treſpaſs." 2 *Hawk. P. C.* 225. *c.* 25. § 59. proves alſo that indictments muſt be certain. *Weſt's Precedents*, 2*d part*, title, *Indictments and Offences*, p. 102. *b.* § 97. is an indictment for a conſpiracy *falſly*, *&c.* to indict. The preſent indictment is only "That they *wickedly and maliciouſly* conſpired to indict this man: Which may be true; and yet it might not be falſly. It muſt be *both* malicious *and* falſe; to make it indictable as a conſpiracy. The offence conſiſts in the *unlawful agreement* to indict *falſly* and maliciouſly: And ſuch an unlawful *agreement* "maliciouſly to indict falſly," would be indict-

able, though never carried into execution. But nothing more than the malicious agreement " to *indict* this man" appears in the *charge* itſelf of this indictment.

Second point. As the *charge* itſelf is only *general*, the ſetting forth the indictment *verbatim*, *afterwards*, can not help this *defect in the charge*. There are two inſtances of *villainous* judgment being awarded. 27 *Aſſize*, *pl.* 59. *fo.* 141. *b.* (by inqueſt;) 46 *Aſſize*, 11 *fo.* 307. *a.* (by indictment.) But in neither of them does it appear that the conſpiracy was for a *capital* offence: It is only ſaid " That they were *attainted of conſpiracy*." *Hawk. P. C. lib.* 1. *c.* 72. § 9. under the title *Conſpiracy*, ſays, " That he, who " is convicted at the ſuit of the *king* of a conſpiracy to accuſe another of " a matter which may touch his life, ſhall have the *villainous* judgment, " which is given by the common law, and not by any ſtatute." And the *villainous* judgment is certainly the proper judgment, where the conſpiracy is " to indict for a *capital* crime." But then the capital offence ought to be explicitly ſet forth. " A crime liable to be puniſhed capitally is not enough, without ſpecifying what capital crime. For this is a *matter of law*; and therefore the *Jury* are not the proper judges of *this*. And the want of this allegation, if it be omitted in the *charge* of the conſpiracy itſelf, can not be *ſupplied* by any thing that proceeds or comes after. The conſpiracy *itſelf* is the offence *indictable*, *though no indictment* be drawn up or found, or any thing done in purſuance of ſuch conſpiracy. And *if* there was *no ſuch* conſpiracy, then there could be no indictment *according* to it. So that the *charge* itſelf is here *inſufficient*. But if theſe ſubſequent words *could* be connected with it, yet at moſt it is a charge by way of implication only, *not* a clear *direct poſitive* charge. He therefore inſiſted upon theſe two things; 1ſt, This is a charge of a mere *conſpiracy* " to indict" only; not of a conſpiracy to indict falſly: and if it be not good, no judgment can be given upon this inſufficient indictment. 2dly, It cannot be made good by any implication, if not *poſitively* and *directly* alledged at firſt. 2 *Hawk. P. C. p.* 227. *c.* 25. § 60. is expreſs to this purport. *Hale H. P. C.* 2d vol. 182, 183. 4 *Co.* 44. *b. Vaux*'s caſe (for poiſoning *Nicholas Ridley*.) *Stamford P. C. lib.* 2. title *Enditement*, *c.* 31. *p.* 96. *b.* is expreſs " that an indictment *is not good* which muſt have an argument or implication to *make* it it good." *Certainty* in indictment is the ſubject's ſecurity. The precedents in *Tremaine* 82 and 85. are not ſuch precedents as that any thing can be collected from them.

Mr. *Gould contra pro Rege.* The term " *conſpiracy*" is always taken in *mala parte*. So it appears by the Regiſter. There is but one count in this indictment; and the whole of it muſt be taken together as *one charge:* it is not to be ſeparated and divided, one part of it from another. It conſiſts of the inducement, the charge itſelf, and the recited indictment, (which is ſet forth *verbatim*). This is an indictment at *common* law. 2 *Inſt.* 562. ſays, " The ſtatute of 33 (or as he ſays it really was, the 21) " *Ed.* 1. intitled, a definition of conſpirators, is an *affirmance* of the *com-* " *mon* law." In 6 *Mod.* 186. *Rex et Regina* v. *Beſt*, *per Holt*, " A conſpi- " ſpiracy '*late loquendo*,' or a confederacy *to charge one falſly* (without more)

" more) *is a crime*; though it be not an indictment for a formed con-
" ſpiracy, *ſtrictly* ſpeaking; which requires an infamous judgment and
" loſs of *liberam legem.* No *villainous* judgment has been given, ſince the time of *E.* 3. In *F. N. B. fo.* 253. 8*vo Edit.* of 1704. (and alſo of 1718) the form of the writ is " *Oſtenſur' quare* conſpiratione inter eos *præhabitâ*, " *præfat' A.* de, &c. *indictari*, et ipſum ea occaſione capi, &c. *falſo* et ma-
" licioſe procuraverunt; ad &c. et contra &c. proviſ." So that there the " *falſly and maliciouſly*" is applied to the *indictment*, *not* to the *conſpiring.* 2 *Inſt.* 562. The caſe of *Welbye* (for citing in the ſpiritual court) does not charge the conſpiracy to be falſe, but *only* malicious. 1 *Hawk. P. C. c.* 72. *p.* 189 to 191. ſhews, if there be a *conſpiracy*, it is puniſhable in an exemplary manner. *Conſpiracy*, *ex vi termini* only, is indictable. *Tremaine's Entries* 85. *Rex* v. *Freeman*, only charges, " That illicitè, dia-
" bolicè, nequiter et malicioſe conſpiraverunt (to charge with an attempt
" to bugger) *without the word* falſo." It is not neceſſary to apply the " falſo et malicioſe" to the *conſpiring.* So that the " falſly, wickedly and maliciouſly," does here come in, in its proper place. Conſequently, here *is ſufficient certainty.* It appears, and is found, " That they did wickedly and maliciouſly conſpire falſly to indict this
" man." And this is an indictment at common law. 3 *Inſt.* 143. in making the lawful acquittal of the party grieved, a requiſite to conſtitute the guilt of the offender, lays down a propoſition which is not true. And this appears clearly by *Hawk. P. C. lib.* 1. *c.* 72. *p.* 189, 190. and is confirmed by the Poulterer's caſe in 9 *Co.* 56. And 9 *Rep.* 56. *b. Les Poulters* caſe, mentions the commiſſion; which does not ſpeak of conſpiracies *executed*, but only of " *conſpiracies*" in general. As to the ſecond objection, It is an offence undoubtedly " to conſpire to indict a perſon falſly and maliciouſly, of ſome capital crime, in *general*; and then according *to* ſuch conſpiracy, afterwards *actually* to indict him falſly and maliciouſly, for a particular capital crime." The indictment concludes, " contra form' ſtatut':" and therefore the court may pronounce the villainous judgment, if they think proper.

Mr. Serjeant *Davy*, in reply:—There is a diſtinction between a *writ* of conſpiracy, and an *indictment* for a conſpiracy. In an *action*, the *damage* is the giſt of the action; and therefore the writ and declaration muſt charge, " That he was indicted and *ſuſtained damage:*" But that is not neceſſary in an *indictment*; which is an offence againſt the public. And this diſtinction explains lord *Coke*'s meaning in 3 *Inſt.* 143. Its being *after verdict* or *before* verdict makes no difference. *Hale's* 2 *H. P. C.* 193. is expreſs, " That a defective indictment is *not aided by verdict.* For an indictment is not within any of the ſtatutes of jeofails. None of them extend to an indictment." It is not denied " That this is an indictment for a mere *conſpiracy* only;" and nothing more: and there is no allegation of its being a *falſe* one. Therefore the indictment is bad: and no judgment can be given upon it.

Lord *Mansfield*—We'll think of it. The argument turns upon its being an indictment for a *conſpiracy only.*

Mr.

Mr. Juſtice *Deniſon*.—In the caſe of *Moor* v. *Kinnerſley*, it was holden "That an indictment would lie for a *conſpiracy only*." *Curia adviſare vult*. N. B. The defendants (who had been brought into court by virtue of the *habeas corpus)* were now committed to the *Marſhal*, while the court took time to conſider. On *Wedneſday* 14th *May* 1760, lord *Mansfield* delivered the opinion of the court. He ſtated the caſe, and the objections: (which, he ſaid, had been very ingeniouſly argued.) But, That they all agreed, that in reality there was no colour for the objections. If this had been a bare *unexecuted* conſpiracy, which had *never taken effect* (as that in *Kinnerſley*'s caſe was) the objection might have had *more* weight (though he gave *no opinion*, he ſaid, *what degree* of weight they might have had even in that caſe.) But here is much *more* than a *conſpiracy without effect*. Here is an *overt act* laid, as I may call it; and it is found "That the defendants, according to *the conſpiracy, combination and agreement between them before had*, actually did, *falſly*, wickedly and maliciouſly, and without any reaſonable or probable cauſe, *indict* this man;" and the very *indictment itſelf* is particularly *ſpecified* in the preſent one. So that this was a *complete* formed conſpiracy, *actually* carried *into execution*. We are all very clear that there is no colour for the objections, in the preſent caſe; and that the rule ought to be diſcharged. *Per Cur*. The rule to ſhew cauſe why the judgment ſhould not be arreſted, was diſcharged.

2 Bur. Rep. 1027.

Afterwards in Trinity term, Mr. Juſtice *Foſter* (in the abſence of Mr. Juſtice *Deniſon*) pronounced the ſentence upon the defendants; whoſe offence (of *maliciouſly conſpiring to indict*, and actually *falſly indicting* a perſon of a capital *crime*, whereof he was innocent) would have been in point of real guilt, an aggravated and atrocious murder, he ſaid, if it *ſucceeded* according to their intention; and even now deſerved a very exemplary puniſhment, notwithſtanding it had *not* ſucceeded according to their wiſh.

Puniſhment for a conſpiracy.

John Spragg (the father) was ſentenced to be remanded to the priſon of court, for one month; to be ſet twice in and upon the pillory (for an hour each time) once at *Charing Croſs*, and again at the *Royal Exchange*; to be impriſoned, in the priſon of this court, for two years from the end of the ſaid month; to pay a fine of 50 *l*. to the king; to find ſecurity for his good behaviour for three years (himſelf in 40 *l*. and each ſecurity in 20 *l*.) and to be committed *quouſque*. *Mary*, the daughter (being conſidered by the court as leſs criminal, partly from her youth, and partly as ſhe was under the direction and influence of her father) was only committed to the cuſtody of the marſhal, to be impriſoned for the ſpace of ſix months from this time. Note—They had been, both of them, *already* in cuſtody, (in town and country) near a year and a half.

It is clear, that thoſe who are convicted of conſpiracy at the ſuit of the party, ſhall have judgment of fine and impriſonment; and to render the plaintiff his damages. 1 *Haw*. 193.

Alſo it is certain, that he who is convicted, at the ſuit of the king, of a conſpiracy to accuſe another of a matter which may touch his life, ſhall have judgment that he ſhall loſe the freedom and franchiſe of the law (whereby he is diſabled from being put upon any jury, or to be ſworn as a wit-

a witneſs, or even to appear in perſon in any of the king's courts) and alſo that his houſes, lands and goods ſhall be ſeized into the king's hands, and his houſes and lands ſtripped and waſted, his trees rooted up, and his body impriſoned. And this is commonly called *villainous* judgment, and is given by the common law, and not by any ſtatute, and is ſaid generally in ſome books to be the proper judgment upon every conviction of conſpiracy at the ſuit of the king, without any reſtriction to ſuch as endangered the life of the party; but this point does not ſeem to be any where ſettled. 1 *Haw.* 193.

Conſtable.

CONSTABLE is uſed in different ſenſes in our common law. And firſt, the Conſtable of *England*, who is alſo called Marſhal, *Staundf. Pl. Cor. f.* 65. of whoſe authority and dignity a man may find many arguments and ſigns, as well in the ſtatutes as in the chronicles of this realm. His power conſiſts in the care of the common peace of the land, in deeds of arms, and matters of war. *Lamb. Duty of Conſtables*, *numb.* 4. wherewith agrees the ſtatute of 13 *R.* 2. *cap.* 2. *ſtat.* 1. Of this officer or magiſtrate, *Gwyn*, in the preface to his readings, ſaith to this purpoſe: The court of the conſtable and marſhal determines contracts touching deeds of arms out of the realm, as combats, blazons of armory, and ſuch like; but he hath nothing to do with battel in appeal, nor generally with any other thing that may be tried by the law of the land. See *Forteſcue*, *cap.* 32. This office heretofore belonged to the lords of certain manors *jure feudi*; and why it is diſcontinued, ſee *Dyer* 285. *pl.* 39. But of this magiſtracy (ſaith *Lambard*) were drawn theſe inferior conſtables, which we call conſtables of hundreds and liberties, and firſt ordained by the ſtatute of *Wincheſter*, 13 *Ed.* 1. which appoints for the conſervation of the peace, and view of armour, two conſtables in every hundred and liberty; and theſe are at this day called high conſtables, becauſe the increaſe of people and offences hath again under thoſe made others in every town, called *petty conſtables*, who are of the like nature, but of inferior authority to the other. *Termes de la ley.*

As to high and petty conſtables, they appear to have been officers of great antiquity; for by the laws of king *Alfred*, the freemen were to diſtribute themſelves into decennaries and hundreds, and every ten freeholders choſe an annual officer, whom they called conſtable, borſholder, tithingman or headborough, as head of the decennary; theſe, in every hundred where there was a feudal lord, were ſworn in, and admitted by the lord or his ſteward, in his leet; but where there was no ſuch feu-

dal

dal lord, the ſheriff in his turn had the ſwearing and placing of them in; alſo if there was no feudal lord of the hundred, an annual officer was choſen, who was to preſide over the whole hundred, who was called the high conſtable; but if the hundred was feudal, as it often anciently was, then ſuch lord of the hundred adminiſtered the office himſelf. 1 *Bac. Abr.* 438.

At common law, before the making of the ſtatutes by which juſtices of peace were ordained to keep the peace, the *chief juſtice of England* was appointed by the king, and he had authority, and was ordained to determine matters touching the crown, and *for conſervation of peace throughout the realm*, and he thereby is the chief juſtice of peace. *Alſo*, by the common law, before there were any juſtices of the peace, *conſtables of every town* were keepers of the peace within their towns. *Kitch. of Courts* 96.

An *high conſtable* is not ſuch an officer, or conſervator of the peace, whereof the common law takes any notice; for he is not mentioned in any book; *per Anderſon. Cro. E.* 375. *pl.* 25. *Hill.* 37 *Eliz.* in the caſe of *Sarrock* v. *Hannamer.*

High conſtables were not *ab origine*, but came in with juſtices of peace; *per Twiſden* J. *Mod.* 13. *pl.* 26. *Mich.* 21 *Car.* 2. *B. R.*

As to the *antiquity* of the office of a conſtable, it ſeems to be the better opinion, that both conſtables of hundreds, which are commonly called *high conſtables*, and alſo conſtables of tithings, which are at this day commonly called petit conſtables or tithingmen, and were anciently called chief pledges, were by the common law, and not firſt ordained by the ſtatute of *Wincheſter*, *cap.* 6. as it is holden by ſome that they were; for that ſtatute does not ſay there ſhall be no ſuch officers conſtituted; but clearly ſeems to ſuppoſe that there were ſuch before the making of it. 2 *Hawk. P. C.* 61. *c.* 10. *ſect.* 33.

By the Stat. of *Wincheſter*, 13 *Ed.* 1. *ſt.* 2. *c.* 6. [*A. D.* 1285] "In every hundred and franchiſe two conſtables ſhall be choſen to make the view of armour: And the conſtables aforeſaid ſhall preſent before juſtices aſſigned ſuch defaults as they do ſee in the country about armour, and of the ſuits of towns, and of highways, and alſo ſhall preſent all ſuch as do lodge ſtrangers in uplandiſh towns, for whom they will not anſwer."

Who is obliged to ſerve as conſtable, and how puniſhed for not ſerving.

It ſeems agreed, that all ſworn attornies, and all other attornies, and all other officers, whoſe attendance is required in the courts of *Weſtminſter-Hall*, are not obliged to ſerve or execute any inferior pariſh office, and that where they are choſen, though by a particular cuſtom, with reſpect to their eſtates or otherwiſe, they may have a writ of privilege, for no cuſtom ſhall be intended to be more ancient than the uſages of thoſe courts, and therefore ſhall give way to them. 1 *Bac. Abr.* 440.

So if an alderman of *London* has an houſe at *D.* in *Eſſex*, and he as an inhabitant there is choſen conſtable, yet he is not compellable to ſerve, for that as an alderman he is bound to be preſent in the city, for the good government thereof. *Cro. Car.* 585. 1 *Jones* 462. *S. C.*

But

But a captain of the king's guards, being preſented to ſerve as conſtable, in purſuance of a cuſtom in reſpect of his lands in a town, cannot claim this privilege; for though by this office he is bound to a perſonal attendance on the king, yet ſuch office being of late inſtitution, ſhall not prevail againſt an ancient cuſtom. See *Keb.* 309. 1 *Sid.* 272, 355. 1 *Lev.* 233. 1 *Keb.* 933.

Yet if ſuch an officer, or a gentleman of quality, who hath no ſuch office, or a practiſing phyſician be choſen conſtable of a town, which has ſufficient perſons beſides to execute this office, and no ſpecial cuſtom concerning it, perhaps he may be relieved by the *King's Bench.* 2 *Hawk.* 63.

By ſtat. 5 *H.* 8. *cap.* 6. The wardens and fellowſhip of ſurgeons infranchiſed in *London*, and all barber-ſurgeons admitted and approved according to the ſtatute made in that behalf, not exceeding the number of twelve, ſhall be diſcharged of conſtableſhip, and watch, *&c.*

By ſtat. 33 *H.* 8. *cap.* 43. The preſident of the commonalty and fellowſhip of phyſick in *London*, and the commons and fellows of the ſame, ſhall not be choſen conſtables in the city of *London*, or ſuburbs of the ſame, *&c.*

By ſtat. 6 *W. & M. cap.* 4. All perſons uſing the art of an apothecary, who have been brought up and ſerved as apprentices in the ſaid art for ſeven years, according to the ſtatute of 5 *Eliz.* ſhall be freed and exempted from the office of conſtable.

A. was indicted for not taking on him the office of high conſtable; and the queſtion on a ſpecial verdict was, whether a tenant in ancient demeſne may be made conſtable of an hundred, which reaches farther than the demeſnes, and it was adjudged that he might. 2 *Show.* 754. 1 *Vent.* 344. *S. C.*

By ſtat. 1 *W. & M. c.* 18. *ſect.* 7. If any perſon diſſenting from the church of *England*, ſhall be choſen conſtable, and ſhall ſcruple to take upon him the office, in regard of the oaths, or any other matter required to be done in reſpect of ſuch office, he may execute it by a ſufficient deputy by him to be provided, to be allowed by ſuch perſons, and in ſuch manner, as ſuch officer ſhould have been allowed. And by *ſect.* 11. of the laſt mentioned ſtatute, every teacher or preacher in holy orders, or pretended holy orders, in a congregation tolerated by law, ſhall from the time of his ſubſcription and taking the oaths, be exempted from the office of conſtable.

By ſtat. 10 & 11 *W.* 3. *c.* 23. *ſect.* 2, 3. The proſecutor of a felon to conviction, or perſon to whom he ſhall aſſign the certificate thereof, ſhall be diſcharged from the office of conſtable.

The privilege of exemption from being ſworn conſtable extends to a parliament man's ſervant; agreed and admitted by *Twiſden* juſtice; but he ſaid he did not think it extended to his tenant. *Mod.* 13. *pl.* 36.

By ſtat. 5 *Hen.* 6. *c.* 6. The ſurgeons of *London* are exempt from bearing the office of conſtable; and the act likewiſe extends to barber-ſurgeons approved and admitted according to the ſtatute of 3 *Hen.* 8. *c.* 11. ſo that they exceed not the number of twelve perſons.

Mr. ſerjeant *Hawkins* ſays it ſeems, that by the equity of this ſtatute, and the ancient cuſtom of the realm, all ſurgeons have been allowed the like privilege. 2 *Hawk. P. C.* 64.

A ſurgeon was indicted for refuſing to ſerve the office of conſtable, whereupon a *noli proſequi* was moved for and granted *niſi*, and the report ſays, that no cauſe was ſhewn, as ever he heard. *Comyn. Rep.* 312. *pl.* 161.

A perſon duly elected conſtable, refuſing to take upon him the office, may, if preſent, be fined by the court; and if abſent, on having a certain time and place appointed him for the taking of the oath before a juſtice of peace, may, after notice of ſuch appointment and preſentment of the next court, be amerced. *Cro. Car.* 567. *Co. Ent.* 572. 5 *Mod.* 130. *Salk.* 175. 8 *Co.* 38.

Alſo in either caſe he may be indicted, either before juſtices of *oyer* and *terminer*, or at the ſeſſions of the peace, but ſuch indictment ought ſpecially to ſet forth the manner of every ſuch election, appointment, notice and refuſal, and before whom the court was holden. 2 *Hawk. P. C.* 64.

Neither is an indictment, for not finding a ſufficient perſon to ſerve the office of conſtable good, unleſs that ſuch indictment ſhew that the party refuſed to ſerve it himſelf. 1 *Keb.* 416. 2 *Hawk. P. C.* 64.

It ſeems by the better opinion, that a cuſtom in a town, that the inhabitants thereof ſhall ſerve the office of a conſtable by turns, is good and that the objection, that by ſuch means, it may come to a woman's turn to ſerve, is of no force, ſince ſhe is allowed to make a deputy, or procure one to ſerve for her, who ſhall be conſidered as the proper officer. 2 *Keb.* 304. 1 *Sid.* 355. 2 *Hawk. P. C.* 63. *Cro. Car.* 389. *cont.*

By whom conſtables are choſen, appointed, ſworn and removed.

The office of conſtable being neceſſary for the preſervation of the peace, juſtices of the peace have, by an uninterrupted uſage, not now to be diſputed, taken upon them not only to ſwear conſtables who have been choſen at a torn or leet, but alſo to nominate and ſwear conſtables, where none have been ſworn at ſuch courts, through the neglect of the ſheriff or lord, and alſo to diſplace thoſe who have been ſo choſen; and this point has been carried ſo far as to allow the ſeſſions of the peace to ſwear one conſtable who had been elected at the leet, and unduly rejected by the ſteward, who had ſworn another in his place. 1 *Bac. Abr.* 439.

And by the ſtat. 13 & 14 *Car.* 2. *cap.* 12. *par.* 15. reciting, "That the laws and ſtatutes for apprehending rogues and vagabonds, had not been duly executed, ſometimes for want of officers, by reaſon lords of manors do not keep court leets every year for making of them; and it is enacted, "That in caſe any conſtable, headborough or tithingman, ſhall die, or go out of the pariſh, any two juſtices of the peace may make and ſwear a new conſtable, headborough, or tithingman, until the lord ſhall hold a court, or until next quarter-ſeſſions, who ſhall approve of the ſaid officers ſo made and ſworn as aforeſaid, or appoint others, as they ſhall think fit; and if any officer ſhall continue above a year in his or their office, that then in ſuch caſe the juſtices of the peace in their quarter-ſeſſions may diſcharge ſuch officers, and may put another fit perſon in his or their place, until the lord of the manor ſhall hold a court as aforeſaid."

The

The juſtices of the peace of the county of *Northampton*, at their general ſeſſions chooſe a conſtable for *Holmby*, and for not coming in to take the oath, proceeded againſt him; which proceedings being removed by *certiorari* into *B. R.* it was moved on affidavits, that there had been a conſtable there for fifty years before, and that he might be diſcharged, alledging likewiſe that *Holmby* was a privileged place, and that all the inhabitants were the duke of *York*'s tenants. But the court held that they could not diſcharge him on motion, and ſaid, that they muſt determine the matter by action of falſe impriſonment, or ſome other way, and inclined ſtrongly, that he could not any way be diſcharged; for *per cur'*, though originally conſtables were choſen in leets; yet the conſtable being an officer, whoſe duty it is to keep the peace, the juſtices may chooſe him in caſes of neceſſity; as in the hamlets about the *Tower*, the juſtices, by reaſon of the increaſe of buildings where there was formerly but one conſtable, did chooſe five: and it was ruled they might do ſo; and they ſeemed to incline, that though formerly there had been none, yet they might chooſe one, if they ſhould think it convenient. 1 *Bac. Ab.* 439. 1 *Mod.* 13. *S. C.* 2 *Keb.* 557. *S. C.*

Information againſt *K.* for refuſing to take the oath of a conſtable of the hundred, been choſen in the leet. The defendant *pleads that* W. *is an ancient borough, and that they have a leet there, and uſed to chooſe their own officers, &c.* within the borough. The queſtion was, *whether the living within the* juriſdiction of *an inferior leet, ſhould exempt* a man *from being choſe high conſtable in the hundred. Hale* Ch. J. ſaid the caſe will be very *different* if this be really a *borough*, and if it be an *upland town*; for formerly in *England* every hundred uſed to ſend their jury, and every borough to ſend four men of their own, and conſtables were before the ſtatute, but that gives them view of armour; and he ſaid that the ſuperior leet ſhall not meddle in the inferior of matters inquirable there, unleſs it be in caſe of omiſſion; but he ſaid, a conſtable of an hundred was an article that the inferior court could not meddle in, becauſe it is an office that extends beyond their juriſdiction, and ſo judgment was againſt the defendant *niſi. Freem. Rep.* 348, 349. *pl.* 443. *Mich.* 1675. *Keen's caſe.*

And an information was brought againſt *King* for refuſing the office of a conſtable of *Nortonferris*, within which was an ancient borough that had a leet, *viz. Wincanton*, and *he pleaded that he being within, and reſident in the leet of the borough, ought not to do the office of conſtable of the hundred*; but judgment was given againſt him; and it was ſaid, that if there were a ſpecial cuſtom to be diſcharged, it might be good. 3 *Keb.* 197, 230, 231. *Trin. & Mich.* 25 *Car.* 2. *B. R. King* v. *King.*

A ſpecial verdict found that within the manor of the hundred of *Farnham*, there are ſeveral other manors belonging to divers lords, the inhabitants whereof uſed to be elected for the ſaid hundred; they find alſo that there is the *manor of the town* of *Farnham, within the manor of the ſaid hundred*, in which there is a court-leet, and that the *defendant is an inhabitant within the ſaid town* of *Farnham, & non alibi*; *and that no inhabitant* of *the town* of Farnham *ever ſerved* as high conſtable *for the hundred of Farnham.* The queſtion ariſing upon the ſpecial verdict was, whether *the*

defendant being in a particular leet, is excuſed from *ſerving* as high conſtable *of the hundred?* And on debate the court held, that he is not excuſed. 11 *Mod.* 215. *pl.* 3. *Paſch.* 8 *Ann. B. R.* the *Queen* v. *Jennings* is a different caſe.

S. *was preſented conſtable by the homage of* a leet in *Eſſex*, the *ſteward refuſed to ſwear him; and nominated and ſwore in his place one* R. The juſtices of peace at the quarter *ſeſſions, upon an examination* into this matter, *ordered that* S. *ſhould ſerve the office and ſwear him* accordingly; this order was removed by a certiorari, and exception was taken to it, that the juſtices had intermeddled in a matter of which they had no conuſance; for the appointment and ſwearing of a conſtable did properly belong to the lord of the leet. *Per Cur.* The election of a conſtable properly belongs to the homage, and though the juſtices of peace have not originally the making of a conſtable, yet *this is a matter of the peace within their general juriſdiction*, and they have power to examine this matter at the ſeſſions; and as to the ſwearing of a conſtable, any ſingle juſtice of the peace may do it; and the order was confirmed. 2 *Jones* 212. *Trin.* 34 *Car.* 2. *B. R. The King* v. *Stephens.*

Seſſions may chooſe a conſtable, and the order here appointing him to take the oaths is an election of him, *&c. Per tot. cur.* He may be a perſon not living within any leet. And *per Holloway* J. they might have compelled him to take the oaths by increaſing his fine. *Comb.* 20. *Trin.* 2 *Jac. B. R. Anon.*'

The *ſteward of the leet* uſually certifies under his hand what perſon is choſe, which *certificate* is carried to a juſtice of peace, and if the party refuſe, the *juſtice ſends his warrant* to compel him, but the ſteward may, during the court, ſwear the conſtable as well as a juſtice of peace after. 5 *Mod.* 128. *Mich.* 7 *W.* 3. in the caſe of *Fletcher* v. *Ingram.*

At common law, all conſtables were choſen at the leet, and where there is *no leet*, at the *torn*, but whether by the ſteward or the homage has made a great queſtion, but without queſtion, a *corporation* of common right might not *chooſe* a conſtable; by *cuſtom* they may, but then they muſt *preſcribe* for it. *Per Holt.* 2 *Salk.* 502. *pl.* 2. *Mich.* 8 *W.* 3. *B. R. The King* v. *Barnard.*

The village of *C. having no conſtable*, the juſtices by order of ſeſſions *appointed* one to ſerve there; and *per Holt* Ch. J. The juſtices have all along exerciſed this power, and the court will intend they have a ſufficient authority for it, but the 13 & 14 *Car.* 2. *cap.* 12. gives them authority to do it only in particular caſes. 1 *Salk.* 175, 176. *pl.* 2. *Trin.* 11 *W.* 3. *B. R. The village of Charley*'s caſe.

High conſtables are removable as well as petty conſtables, and the juſtices of peace at ſeſſions are the beſt judges of that matter; *per cur.* 1 *Salk.* 150. *pl.* 19. *Paſch.* 4 *Ann. B. R.* in the caſe of the *Queen* v. *White.*

The mayor of *A.* ſet up a *cuſtom, that the court-leet there ought to make a liſt every year of five perſons to be preſented to the mayor, and that he ought to chooſe*

chooſe one out of them for conſtable, and that the *jury ſhould chooſe the other out of the remaining four:* Now this year the jury had made *no liſt*, but the pariſhioners *choſe conſtables themſelves.* Upon the mayor's applying to the ſeſſions, they made an *order of diſcharge* of one of the conſtables, and *that the mayor's* conſtable, whom he nominated in default of the jury's giving him a liſt, *ſhould be confirmed.* The court now quaſhed this order, for they ſaid, the only ſtatute that gives the juſtices power at all, in relation to conſtables, is the ſtatute of 13 & 14 *Car.* 2. *cap.* 12. *ſ.* 15. And that act gives juſtices power only to put in conſtables in default of the court leet, but does not impower them to diſcharge conſtables already put in. Accordingly the order was quaſhed. *Bernard. Rep. in B. R.* 51. *Paſch.* 1 *Geo.* 2. *The King* v. *Burden and Wakeford.*

By ſtat. 1 *Geo.* 1. *ſt.* 2. *c.* 13. High conſtables are to take the oaths of allegiance, ſupremacy and abjuration, as other perſons who qualify for offices.

How for a conſtable is favoured and protected in his office, or puniſhed for neglect of duty.

Stat. 7 *Jac.* 1. *cap.* 5. If any action is brought againſt a conſtable, for any thing done by virtue of his office, he, and alſo all others which in his aid, or by his command, ſhall do any thing concerning his office, may plead the general iſſue, and give the ſpecial matter in evidence, and if he recovers he ſhall have double coſts.

Stat. 21 *Jac.* 1. *cap.* 12. *ſect.* 6. An action brought againſt a conſtable, headborough, or tithingman for any matter done by virtue of their office, ſhall be laid in the county where the fact was committed, and not elſewhere.

Stat. 34 *Geo.* 2. *cap.* 44. *ſect.* 6. No action ſhall be brought againſt any conſtable or other perſon acting by his order, or in his aid, for any thing done in obedience to the warrant of a juſtice of the peace, until demand hath been made, or left at the uſual place of his abode, by the party, or by his attorney, in writing, ſigned by the party demanding the ſame, of the peruſal and copy of ſuch warrant, and the ſame hath been refuſed or neglected for ſix days after ſuch demand: And if after compliance, any ſuch action ſhall be brought, without making the juſtice who ſigned ſuch warrant defendant, on producing and proving ſuch warrant at the trial, the jury ſhall give their verdict for the defendant, notwithſtanding any defect of juriſdiction in the juſtice. And if ſuch action be brought jointly againſt the juſtice and conſtable; on proof of ſuch warrant, the jury ſhall find for the conſtable, notwithſtanding ſuch defect of juriſdiction as aforeſaid; and if the verdict be given againſt the juſtice, the plaintiff ſhall recover his coſts againſt him, to be taxed in ſuch manner by the proper officer, as to include ſuch coſts as the plaintiff is liable to pay to ſuch defendant, for whom ſuch verdict ſhall be found as aforeſaid.

Sect. 8. " No action ſhall be brought againſt any conſtable, but within ſix months after the act committed.

Stat. 27 *Geo.* 2. *cap.* 20. *ſect.* 2. The conſtable executing a juſtice's warrant for levying a penalty, or other ſum of money directed by any act of parliament, by diſtreſs, may deduct his own reaſonable charges of taking, keeping,

keeping, and ſelling the goods deſtrained; returning the overplus on demand, after ſuch penalty or ſum of money, and charges deducted.

C. was indicted, for that a *burgarly was committed in the night by perſons unknown*; and *J. S. gave notice* to him being conſtable, *and required him to make hue and cry*, and he refuſed, but becauſe he did *not ſhew the place of notice*, the party was diſcharged. *Cro. E.* 654. *pl.* 16 *Hill.* 41 *Eliz. B. R. Crowther*'s caſe.

Another exception was taken to the matter of the indictment, becauſe it has been adjudged, that an hundred ſhall not be charged with a robbery *committed in the night*, for they be not bound to give attendance: no more ought a conſtable to do it in the night. But all the court held the indictment to be good notwithſtanding; for it is not like the caſe of an hundred, becauſe it is the *conſtable's duty upon notice given* unto him *preſently* to *purſue*. *Cro. E.* 16, 17. *pl.* 16. *Hill.* 41 *Eliz. Crowther*'s caſe.

Several conſtables were indicted for *refuſing to execute the warrant of a juſtice of peace, directed to them to apprehend one for a contempt*, and the indictment was allowed. 2 *Roll. Rep.* 78. *Hill.* 16 *Jac. B. R. Coleman*'s caſe.

A conſtable is not *ſuable out of the county* for what he does in execution of this office. Held *per cur'*. *Sty.* 393. *Mich.* 1653. *B. R. Anon'*.

The defendant being a conſtable was *indicted, for that he contemptuouſly and voluntarily neglected to execute diverſa præcepta et warranta directed to him* by juſtices of peace under their hands and ſeals, but it was quaſhed, becauſe it did *not ſet forth the nature and tenor of the warrants*, for, unleſs the defendant can know what particularly he is charged with, he cannot tell how to make his defence. *Vent.* 305. *Hill.* 28 & 29 *Car. B. R. Burrough*'s caſe.

In an *habeas corpus* and *certiorari* for the body of *J. S.* who had been impriſoned for not paying of a fine of 20 *l.* ſet at the quarter-ſeſſions, the return was, that he being conſtable, and demanded by the court to preſent an *highway*, which was ſworn before him by two witneſſes to be *out of repair*, ſaid in contempt of the court, that he *could not preſent it*; for which and certain other contemptuous words, a fine was ſet on him. The court were of opinion, that the fine was not well ſet; for conſtables are to preſent upon their own knowledge, and the two witneſſes ſhould have been carried to the grand jury; for the conſtable was not obliged to preſent upon their teſtimony. *Vent.* 336. *Paſch.* 31 *Car.* 2. *B. R. Anon'*.

Motion to quaſh an indictment *againſt divers inhabitants in* Derby, *for refuſing to meet and make a rate upon the ſeveral pariſhes in* Derby *to pay the conſtables tax*; firſt, becauſe they are not compellable, but the ſtatute only ſays that they may, ſo they have their election, and no coercion ſhall be; *ſed non allocatur*; for *may* in the caſe of a publick officer is tantamount to ſhall, and if he does not do it he ſhall be puniſhed upon an information, and though he may be commanded by a writ, that is but an aggravation of his contempt; but the court refuſed to quaſh it. *Skinner* 370. *pl.* 17. *Mich.* 5 *W. & M. in B. R. The king* v. *The inhabitants of Derby.*

If

If a *juſtice of the peace adjudged that to be an offence which is no offence*, the inferior officer ſhall anſwer, as if one be adjudge the putative father of a baſtard, where after it appears to be born in matrimony, this is void, *& coram non judice, &c.* *Per Holt* Ch. J. *Skin.* 445. *Trin.* 6 *W. & M. in B. R.* In caſe of *Crump* v. *Holford.*

A leet may *ſet a fine* on a conſtable, but the ſeſſions cannot. 5 *Mod.* 96. *Trin.* 7 *W.* 3. in a *nota* at the end of the caſe of *The King* v. *Harpur.*

Falſe impriſonment againſt a conſtable *for executing a warrant of Sir* James Butler, *after he was out of the commiſſion* of the peace. *Per Holt*, conſtable at his peril is to *take notice*, that his warrant is by one in commiſſion; but all the favour we can do is, ſince it was a warrant executed a day or two after Sir *James* was out of commiſſion, that if he has *behaved himſelf honeſtly and civilly*, to be mild to him, and he ſaid, the conſtable ought to ſhew the juſtice of peace's commiſſion, though heretofore it was held, common reputation would be enough; and here the conſtable *coming out of his own pariſh to execute* the warrant, betrays his officiouſneſs. 12 *Mod.* 347. *Mich.* 11 *W.* 3. *Normond* v. *Mills.*

Indictment lies againſt a conſtable for a miſdemeanour in wilfully ſuffering a looſe, idle, lewd and diſorderly woman, taken up by one of the nightly watch as a common ſtreet walker, and delivered to him for ſafe cuſtody, to eſcape out of his cuſtody, before ſhe could be carried before a magiſtrate. 2 Bur. 866, 867. Trin. 32 & 33 Geo. 2. Rex v. Bootie.

On *Tueſday* 19th *June* laſt, Mr. *Aſhurſt* moved in arreſt of judgment, after verdict for the king, upon an indictment againſt a conſtable for a miſdemeanor. The charge in the indictment was, That he, being one of the conſtables of *St. Martins in the Fields*, and being in the execution of his ſaid office, as head of the nightly watch of the ſaid pariſh, did wilfully and unlawfully ſuffer *Margaret Prince*, *being* a looſe, idle, lewd and diſorderly perſon, taken up by *Robert Miller*, one of the nightly watch of the ſame pariſh, between one and two o'clock in the morning, as a common ſtreet-walker, *&c. to eſcape* out of his cuſtody, before ſhe could be carried before a juſtice of the peace, to be dealt with by the juſtice according to law.

The whole indictment was (in ſubſtance) thus—That one *Robert Miller*, being lawfully appointed one of the nightly watchmen of and for the ſaid pariſh, and being in his office and place as ſuch, performing his duty of a watchman there, at an unſeaſonable time, *i. e.* between one and two in the morning, did apprehend and take into his cuſtody one *Margaret Prince*, then and there BEING a looſe, idle, lewd and diſorderly perſon, and a common ſtreet-walker, and *being* then and there behaving herſelf riotouſly, and walking the ſtreets there to pick up men, in breach of his majeſty's peace; and did then and there take, lead and convey the ſaid *Margaret Prince* in his cuſtody, to a certain priſon called the watch-houſe in the ſaid pariſh, and did there *deliver her* in cuſtody unto one *John Bootie*, who then and there was one of the conſtables of the ſaid pariſh, and then and there being in the execution of his ſaid office of ſuch conſtable as the head of the nightly watch of the ſaid pariſh; and did then and there *leave and deliver up* her the ſaid *Margaret Prince in charge with the ſaid John Bootie*, ſo being ſuch conſtable as aforeſaid, and in the execution of his ſaid office as aforeſaid; and did then and there CHARGE *and* REQUEST *the ſaid John Bootie* ſo being ſuch conſtable as aforeſaid, *to keep and detain* the ſaid *Margaret Prince* SO BEING ſuch looſe, idle, lewd and diſorderly perſon:

perſon, and a common ſtreet-walker walking the ſtreets, there to pick up men as aforeſaid, IN HIS CUSTODY, UNTIL the ſaid *Margaret Prince* could be carried and conveyed into cuſtody before ſome one of his majeſty's juſtices aſſigned to keep the peace in and for the ſaid city and liberty, there to be dealt with by ſuch juſtice according to law for her ſaid offence and breach of the king's peace: Nevertheleſs, the defendant ſo being, *&c.* not regarding the duty of his office, *&c. unlawfully and wilfully diſcharged* her out or his cuſtody, before that ſhe had been carried before any juſtice, *&c.* and *would not keep or detain* her in his cuſtody for the purpoſe aforeſaid, but *wilfully ſuffered and permitted her to eſcape and go at large, &c.*

Upon which indictment the defendant having been tried, and a verdict found againſt him; Mr. *Aſhurſt* prayed a rule to ſhew cauſe why the judgment ſhould not be arreſted upon the following objection:—That it is not charged that the defendant KNEW that ſhe was a ſtreet-walker, *&c.* as this indictment deſcribes her to be: Nor indeed is it poſitively charged "that ſhe *was* one." And if ſhe was *not liable* to be detained by him, he would have ſubjected himſelf to an action for falſe impriſonment, *if he had detained her.* It ought to have *expreſsly* charged "that ſhe *was* ſo;" and that "ſhe was delivered to him *as* ſuch."

Mr. *Norton* and Mr. *Stow* now ſhewed cauſe againſt arreſting the judgment. They inſiſted that the expreſſions "BEING" and "SO BEING" are ſufficient allegations "that ſhe WAS ſo; and that ſhe was delivered to the defendant *as ſuch.*" And as this is *after verdict*, it muſt be taken to have been proved at the trial. It is almoſt impoſſible that he could be ignorant of it: and if he really was ſo, he might have pleaded it.

Mr. *Aſhurſt* and Mr. *Norton*, *contra*——The being *after verdict* is no anſwer, in a *criminal* caſe; whatever it may be in a *civil* one. *Indictments* muſt be poſitive and certain, on the face of them. But this indictment does not ſufficiently ſhew that ſhe was lawfully in the cuſtody of the conſtable. 1 *Hale's Hiſt. P. C.* defines what is lawful cuſtody. This is *no poſitive* allegation "that ſhe was delivered to him *as* a looſe, idle and diſorderly perſon." She might, in fact, be a looſe, idle and diſorderly woman, *&c.* and yet not delivered to him AS SUCH. It was at *his peril* to detain her, unleſs he was well ſatisfied that ſhe was *liable* to be detained. 1 *Salk.* 272. *Dominus Rex* v. *Fell* is in point, That the defendant is not liable for the eſcape of a perſon not committed to his cuſtody *as charged* with a crime.

Mr. *Norton* in reply to the caſes cited, inſiſted that the term "BEING" is a ſufficient *averment* of the fact.

Lord *Mansfield* and Mr. Juſt. *Deniſon* did not come into court till towards the end of the motion: they therefore remained ſilent.

Mr. Juſtice FOSTER——*Fell*'s caſe was *treaſon:* It was an indictment againſt him, as keeper of *Newgate*, for negligently ſuffering the eſcape of a perſon, being in his cuſtody, charged with high treaſon. But would not that have been ſufficient ground to have indicted him for a *miſdemeanour?*

nour? And the preſent caſe is a miſdemeanour, and ſufficiently charged upon the defendant. The peace of this city can never be preſerved unleſs watchmen are ſupported in doing their duty.

Mr. Juſtice *Wilmot*——I think it is a miſdemeanour in the conſtable to diſcharge an offender brought to the watch-houſe by a watchman in the night; though *without* any poſitive charge. But, in the preſent caſe, I think that this is a *ſufficient allegation* of the *fact* of her being ſuch a perſon, and of her being delivered to the defendant *as* ſuch a perſon as ſhe is deſcribed to be. *Per Cur.* The RULE "to ſhew cauſe why the judgment ſhould not be arreſted," was DISCHARGED.

For other matters, ſee **Arreſt, Commitment, County-rate, Juſtices of Peace.**

Conviction.

THE power of a juſtice of the peace is in reſtraint of the common law, and in abundance of inſtances is a tacit repeal of that famous clauſe in the great charter, that a man ſhall be tried by his equals; which alſo was the common law of the land long before the great charter, even for time immemorial, beyond the date of hiſtories and records. Therefore generally nothing ſhall be preſumed in favour of the office of a juſtice of the peace; but the intendment will be againſt it. Therefore where a ſpecial power is given to a juſtice of the peace by act of parliament to convict an offender in a ſummary manner, without a trial by jury, it muſt appear that he hath ſtrictly purſued that power; otherwiſe the common law will break in upon him, and level all his proceedings. Therefore where a trial by jury is diſpenſed withal, yet he muſt proceed nevertheleſs according to the courſe of the common law in trials by juries, and conſider himſelf only as conſtituted in the place both of judge and jury. Therefore there muſt be an information or charge againſt a perſon; then he muſt be ſummoned or have notice of ſuch charge, and have an opportunity to make his defence; and the evidence againſt him muſt be ſuch as the common law approves of, unleſs the ſtatute ſpecially directeth otherwiſe; then, if the perſon is found guilty, there muſt be a conviction, judgment and execution, all according to the courſe of the common law, directed and influenced by the ſpecial authority given by the ſtatute; and in the concluſion, there muſt be a *record* of the whole proceedings, wherein the juſtice muſt ſet forth the particular manner and circumſtances, ſo as if he ſhall be called to account for the ſame by a ſuperior court, it may appear that he hath conformed to the law, and not exceeded the bounds preſcribed to his juriſdiction. 1 *Burn's Juſt.* 364.

Proceedings upon convictions muſt be in the preſent tenſe. 1 Stran. 628. Mich. 11 Geo. 1. Rex v. Roberts,

Conviction for profane ſwearing quaſhed, being *præſtitit ſacramentum*, in the preterperfect tenſe. It was held good in ſubſtance, being for ſwearing 150 oaths *in his verbis*, *videlicet*, *By G—*; and curſing 150 curſes *in his verbis*, *videlicet*, *G— damn you*; without repeating each 150 times.

In conviction for keeping an alehouſe not neceſſary to ſhew he was not puniſhed under the former act. 1 Stran. 555. Trin 9 Geo 1. Rex v. Ford.

Conviction on 3 *Car.* 1. *c.* 3. for keeping an alehouſe without licence: and *Forteſcue* objected, that in the act there is a proviſo to exempt perſons who have been puniſhed by the former law of 5 & 6 *E.* 6. *c.* 25. and therefore it ſhould have been ſaid he had not been proceeded againſt upon that act. *Sed per curiam*; That coming in by way of proviſo, he ſhould have inſiſted on it in his defence; it appears he was aſked what he had to ſay, and therefore we may reaſonably preſume he had no ſuch defence to make. The conviction was confirmed.

An excuſe under a proviſo need not be taken notice of in a conviction. 2 Stran. 1101. Mich. 12 Geo. 2. Rex v. Bryan.

The defendant was convicted on the gin act, and an exception was taken that there was no averment, that it was not ſold to be uſed in medicine: and the caſes on the game act were mentioned, where in conviction it not neceſſary to exclude all the qualifications for killing game. *Strange contra* inſiſted, that the reaſon of that was becauſe thoſe were in the enacting clauſe; whereas this about medicine comes in by way of proviſo, and is by way of defence to be ſhewn on the defendant's part. And for that purpoſe he cited *Mich.* 11 *Geo.* 1. *Rex* v. *Theed*; where in a conviction for obſtructing an exciſe-officer on 8 *Ann. c.* 9. it was objected, That it not being averred to be in the day, it ſhould have been ſhewn that there was a conſtable preſent, which is made neceſſary in the night; but held well, and its being in the night, ſhould have been ſhewn on defendant's part. *Et per Curiam*; This is brought within the general enacting clauſe: and the true diſtinction is, where the extenuation comes in by way of proviſo, or exception. The conviction was confirmed.

Summons muſt precede a conviction. 1 Stran. 630. Trin. 11 Geo. 1. Rex v. Venables.

There was an order for ſuppreſſing an alehouſe; and after that a ſecond order, reciting that he had ſince continued to ſell ale, and therefore committing him for three days, and till he find ſureties not to ſell without licence. It was moved to quaſh the laſt order for want of ſhewing a ſummons or appearance of the defendant; and *Salk.* 181. and the caſe of *The Queen* v. *Green*, 12 *Ann.* were cited. *Sed per Curiam*; We will not preſume they acted unlawfully: a ſummons is certainly neceſſary, and the juſtice is puniſhable if he proceeds without: you never ſhew notice to the pariſh that is to be charged in orders of removal. The order was confirmed.

Appearance cures defects in ſummons. Hil. 6 Geo. 1. Rex v Johnſon.

Conviction on 5 *Ann. cap.* 14. for keeping a gun not being qualified; and exception was taken by *Fazakerley*, that here was not a reaſonable ſummons; for it was made on 5 *October*, to appear the ſame day, which might be impoſſible upon account of diſtance, or the ſummons being ſerved late, and his witneſſes might not be got together on ſo ſhort a warning: then it is to appear *apud paroch' prædict'*; whereas there are two pariſhes mentioned before; ſo the man may have gone to one, whilſt they were convicting him at the other. *Salk.* 181. *Wearg contra.* The defendant appeared at the time and made defence; ſo that cures all defects in

the ſummons. *Et per Curiam*; The anſwer is right. Then it was objected, that the ſtatute requires the conviction to be by the juſtices of the county where the offence was committed, and that does not appear in this caſe. *Et per Curiam*; That muſt appear, or elſe they have no juriſdiction. *Et per Wearg*, It does; for they diſtribute part of the penalty to the poor of the pariſh of *Chelfield*, in com' Kanc', *infra quam paroch' offenſum præd' commiſſum ſuit.* And the juſtices are of the county of *Kent*, and ſtile themſelves ſo. *Adjournatur. Mich.* 7 *Geo.* it was quaſhed; for *per Curiam*, their juriſdiction muſt appear otherwiſe than out of their own mouth.

In a conviction the evidence muſt be ſet out; and there muſt be an adjudication of the forfeiture. 2 Bur. Rep. 1163 Eaſt. 1 Geo 3. Rex v. Vipont and others.

This was a conviction that ſtood in the crown-paper; and was as follows: Borough of *Derby*, to wit. Be it remembered, that on, *&c.* at, *&c. Thomas Eaton* of the ſaid borough, hoſier and *wool-comber*, *cometh* before Us *Joſeph Bingham* Eſquire, mayor of the ſaid borough, and *John Smith* gentleman, two of his majeſty's juſtices of the peace of and for the ſaid borough, and upon his oath *depoſed* before us, That *Joſeph Vipont*, *Henry Greatorex*, *John Hall*, *Edward Chapman*, and *Thomas Allen*, journeymen wool-combers, who for ſome months next before their leaving his ſervice as herein after is mentioned, were employed by the ſaid *Thomas Eaton* in the wool-combing buſineſs, to work for him at reaſonable wages, *had*, each for himſelf, at the ſaid borough, confeſſed to him, "*That they had*, in "the month of *November* laſt paſt, at the ſaid borough, agreed *one amongſt* "*another*, and with other *journeymen wool-combers*, *to* raiſe *and* advance "their wages, and that they *would not work with* him *or any* other *maſ*- "*ter* in the wool-combing buſineſs, *unleſs* he and they would *advance* "their wages:" and that the ſaid *Thomas Eaton* thereupon refuſed ſo to do; and thereupon all his ſaid journeymen *refuſed to work* for him at their former reaſonable wages, and *had left his ſervice.* Whereupon the ſaid *Joſeph Vipont*, *Henry Greatorex*, *John Hall*, *Edward Chapman*, and *Thomas Allen*, *appearing before Us* to anſwer the ſaid charge; and *having* heard *the ſaid* charge; and, *in the preſence of the ſaid Thomas Eaton*, being *called upon* by Us to ſhew cauſe why they ſhould not be convicted for unlawfully entering into ſuch combination as aforeſaid, contrary to the ſtatute in that caſe made and provided; and *having nothing to ſay*, nor being *able to make out* any thing whereby to defend themſelves before Us touching and concerning the premiſſes aforeſaid; thereupon the aforeſaid *Joſeph Vipont*, *Henry Greatorex*, *John Hall*, *Edward Chapman*, and *Thomas Allen*, the day and year aforeſaid, *by the oath of the ſaid Thomas Eaton*, a credible witneſs, are convicted before Us for unlawfully entering into ſuch combination as aforeſaid, at the ſaid borough of *Derby*, to raiſe and advance their wages in the wool-combing buſineſs there, contrary to the acts of parliament in that caſe made and provided. Given under our hands and ſeals, *&c.*

This was a conviction on the act of 12 *Geo.* 1. *c.* 34. "to prevent un- "lawful combinations of workmen employed in the woollen manufac- "tures," and for better payment of their wages. Mr. Serjeant *Davy*, on behalf of the defendants, objected to it; 1ſt, That no evidence is ſtated

to have been *given in the* preſence *of the defendants*; only, the charge was read *to them*, in the preſence of the proſecutor *Thomas Eaton*, the witneſs; but it was not made out and proved by him *viva voce* before them, though they *perſonally appeared*; and conſequently had a right of *croſs-examining* the witneſſes, upon their giving verbal evidence face to face: nor is indeed any evidence at all *ſet out* with ſufficient particularity and preciſeneſs. 2d objection. This *fact*, as charged, is not *an offence within* the ſtatute. Theſe people were all of them *journeymen to the ſame maſter* at home; and *not* perſons aſſembled and formed into unlawful clubs or unlawful ſocieties; which he would have it underſtood that the ſtatute required: and there was *no* written agreement, no reſolution "not to work with "him or any *other* maſter for ſuch wages. 3d objection. Here is *no judgment*: It is only ſaid "That they are *convicted* for unlawfully entering in- "to ſuch combination." It ought to proceed, "*quod forisfaciat*," and expreſsly adjudge *the forfeiture*. So is 2 *Strange* 858. 3 *Geo.* 2. in *Rex* v. *Hawks*; where a conviction for killing a deer was quaſhed, becauſe it was only "*convictus eſt*," without any judgment "*quod forisfaciat*." They ought to have awarded the particular puniſhment; as the act does not fix the duration of the puniſhment, but leaves the time of the impriſonment quite diſcretionary, "for any time not exceeding three months." Therefore this caſe differs widely from caſes where the puniſhment is *aſcertained*, and *neceſſarily flows* from the conviction. The court over-ruled the ſecond objection, as a frivolous one, and not to be ſeriouſly ſupported.

Mr. *Caldecot*, *contra*, for the plaintiff, applied himſelf to anſwer the firſt and third objections. 1ſt, It ſufficiently appears on the face of the conviction, that the defendants heard the evidence. However, it is *not neceſſary* that the evidence ſhould be *given in the* preſence *of the defendants*; for which he cited *Rex* v. *Baker*, 2 *Strange* 1240. in point, as *he* ſaid, *for* him; but quite otherwiſe as the ſerjeant alledged, and as the court alſo explained it; and he obſerved that *this* conviction is as much in the *preſent* tenſe, as that was: the words of it are, "They *are* convicted." As to the third objection——The juſtices have nothing to do but to *convict*: *that* is the judgment. Then *after* the conviction, the juſtices exerciſe their diſcretion: which they *did* here by committing them for three months.

Mr. Serjeant *Davy*, in reply —1ſt, The caſe of *Rex* v. *Baker* proves directly contrary to what Mr. *Caldecot* has applied it. For there, the court took it to *be* a hearing in the preſence of the defendants: they there ſuppoſed the whole to paſs at the very *ſame* time. Here, it is manifeſt that they were *not* preſent at the time when *Thomas Eaton* gave his evidence.

Lord *Mansfield* ſtopt him; it being unneceſſary to ſay any more about enforcing the objections, ſince the firſt and third were fatal. 1ſt, The evidence ought to be taken over again, in a *defendant's preſence*, unleſs he confeſſes. Now here they do not confeſs before the juſtices: and the evidence only is, "That they had formerly confeſſed this combination to "the *witneſs*." And in the caſe of *Rex* v. *Baker*, The court went upon the ſuppoſition, "That the defendant was *preſent* when the evidence was

"given

" given, and did *actually hear it given.*" In a conviction the evidence muſt be *ſet out*, that the court may judge of it; and it muſt be *given in the preſence of the defendant*, that he may have an opportunity of *croſs-examining*. 3d objection——Here the puniſhment is *diſcretionary* as to the *length* of the time of impriſonment: and here is *no judgment* at all; only a conviction. They ought to have gone on, and adjudged the forfeiture. Therefore on both theſe objections, this conviction ought to be quaſhed: for however uſeful a ſtatute this may be for the benefit of trade, yet the juſtices muſt convict according to law.

Mr. Juſt. *Deniſon* concurred in both points. 1ſt, The evidence muſt be given in the *preſence* of the defendant, that he may have an opportunity to croſs-examine. In the caſe of *Rex* v. *Baker*, nothing wrong appeared upon the *face* of the conviction; and therefore the court ſuppoſed and took it to have been *rightly* tranſacted. As to the third objection—The time, the duration of the commitment ought to be *aſcertained* upon the conviction. The ſtatute does not fix it; it only ſays " for any time " *not exceeding* three months."

Mr. Juſtice *Wilmot* concurred in both. 1ſt, The witneſſes ought to be examined *in the preſence* of the party accuſed, that he may have the benefit of *croſs-examination*. And here it appears plainly enough, that *Eaton* the Witneſs againſt theſe Defendants was not *ſo* examined in their preſence. As to the third objection——A conviction was equal to a *verdict* and *judgment*. But this is a verdict without a judgment. In the caſe of *Rex* v. *Hawkes*, *H.* 3 *Geo.* 2. *B. R.* it was ſettled, " That there *muſt* be a judgment of forfeiture." I have a full note of that caſe: It was a conviction for deer-ſtealing, on 3, 4 *W & M. c.* 10. And there, though the penalty was *certain* (a forfeiture of 20 *l.* for every offence in mere hunting; and if a deer be killed, wounded or taken, then 30 *l.*) and though the act of parliament diſtributes the forfeiture, yet it was holden " That there muſt be a judgment to levy it:" For every execution muſt be *founded* on a judgment. The caſes of *Regina* v. *Wingrave*, *H.* 2 *Ann. B. R.* and *Regina* v. *Serle* in *B. R.* were there both quoted by Mr. *Fazakerley* in ſupport of the exception. There was a caſe in *Tr.* 9 *Geo.* 1. *B. R. Rex* v. *Aſhton*, upon a conviction for deſtroying fruit-trees, contrary to 1 *G.* 1. *c.* 48. The words of the conviction were, " Igitur conſideratum eſt per nos, *quod convictus eſt.*" The court held " That there ought to be a *judgment quod* foriſfaciat, or quod *committatur*, *&c.*" But *this* is a much ſtronger caſe; becauſe here there is a *diſcretion* to commit either to the *houſe of correction*, there to remain and be kept to hard labour for any time *not exceeding* three months; or *to the common gaol of the county*, *&c. as they ſhall ſee cauſe*; there to remain without bail or mainprize, for any time *not exceeding three months*. *Per Cur.* unanimouſly and clearly, the conviction muſt be quaſhed.

Coopers.

Coopers.

STAT. 8 *Eliz. c.* 9. [*A. D.* 1565. *Intituled*] "An act to repeal a branch of the ſtatute made in the twenty-third year of king *Henry* the Eighth, touching the prices of barrels and kilderkins."

So much of the ſtatute of 23 H. 8. c. 4. as concerneth the prices of veſſels for ale and beer, repealed, &c.

"In their moſt humble wiſe ſhewen unto the queen's moſt excellent majeſty, and unto the lords ſpiritual and temporal, and unto the commons in this preſent parliament aſſembled, the coopers of the city of *London*, and of all other cities and towns within this realm of *England*, That where in the parliament holden by prorogation at *Weſtminſter* the fifteenth day of *January* in three and twentieth year of the reign of the king of famous memory, king *Henry* the Eighth, father to our ſaid ſovereign lady the queen's highneſs that now is, there was one ſtatute made and enacted, intituled, *An act that no brewers of beer or ale, ſhall make their barrels, kilderkins nor firkins within them; and how much the ſame barrels, kilderkins and firkins ſhall contain:* (2) In which ſtatute, amongſt other things therein contained, it is enacted, That no artificer of the coopers ſhall inhance the prices of any ſuch barrels, kilderkins, firkins or other veſſels, in the ſale of them to any ale-brewer or beer-brewer, or other perſon, as in the ſaid act are mentioned, but ſhould keep the rates of ſuch prices as in the ſame act are expreſſed, and not above; (3) upon pain to forfeit for every barrel, kilderkin and firkin defective or inhaunced in price, in any point contrary to the ſaid act, three ſhillings and four pence: (That is to ſay) for every beer-barrel, nine pence; for every beer-kilderkin, five pence; for every beer-firkin, three pence: And the ale-barrel, ſixteen pence; the ale-kilderkin, ninepence; and the ale-firkin, fivepence; as by the ſame act amongſt divers other things therein contained, more fully and at large doth and may appear: (4) Since which time the clove-board, and ſtuff whereof the ſaid veſſels and the hoops thereof ſhould be made, are riſen and grown to ſuch exceſſive prices, that ſuch as do make the ſaid veſſels, cannot make and ſell any ſuch barrels, kilderkins, firkins, or other veſſels, at the prices expreſſed in the ſaid eſtatute, but to their great loſs and hinderance, whereby the myſtery, trade and faculty of the ſaid coopers is utterly overthrown, to the impoveriſhment and utter undoing of them, their wives, children and families, as is moſt evident:

The difference between the old and new prices of barrel-boards and hoops.

Sect. 2. "Foraſmuch as at the time of the making of the ſaid eſtatute, the coopers might have bought a thouſand of barrel-boards for twelve ſhillings, or thirteen ſhillings and four-pence; and a thouſand of kilderkin-boards for nine ſhillings or ten ſhillings, and a load of hoops for nine ſhillings or ten ſhillings; and now a thouſand of barrel-boards cannot be bought under three and thirty ſhillings and four pence, and forty ſhillings; and a thouſand of kilderkin-boards under ſix and twenty ſhillings and eight

eight pence, and a load of hoops under three and thirty ſhillings and four pence, and forty ſhillings, as is right-well and notoriouſly known.

Sect. 3. " Be it therefore enacted by the queen's moſt excellent majeſty, the lords ſpiritual and temporal, and the commons in this preſent parliament aſſembled, and by the authority of the ſame, That as much of every article, clauſe and ſentence comprized in the ſaid eſtatute, made in the ſaid three and twentieth year of the reign of the ſaid late king, as doth touch and concern the prices of barrels, kilderkins, firkins and other veſſels, and all and every pain and forfeiture expreſſed and declared in the ſaid act, for ſelling of any of the ſaid kind of veſſels above the prices before ſpecified, from the time of new prices to be ſet in form hereafter expreſſed, for ſuch places only as the ſame new prices ſhall be ſet, ſhall be clearly repealed, fruſtrate, and made void.

A repeal of ſo much of the ſtatute of 23 H. 8. c. 4. as toucheth the prices of veſſels for ale and beer.

Sect. 4. " And that from henceforth the prices of all barrels, kilderkins, firkins, and other veſſels to be ſold, for ale, beer, or ſoap to be uttered therein, ſhall be rated and taxed by mayors, bailiffs, and other head officer or officers of every city and town corporate, where any ſuch veſſels ſhall be made, or offered to be ſold.

Who ſhall rate the Prices of veſſels for ale and beer.

Sect. 5. " And where ſuch veſſels ſhall be made or ſold out of any city, borough or town corporate, the prices thereof ſhall be rated and taxed by the juſtices of the peace, or the more part of them, being preſent in the general quarter-ſeſſions, yearly next after *Eaſter*, at ſuch reaſonable prices as they ſhall think reaſonable by their diſcretions; the ſaid eſtatute made in the ſaid three and twentieth year of the reign of the ſaid late king *Henry* the Eighth, or any other law, cuſtom or uſage to the contrary thereof in any wiſe notwithſtanding.

Sect. 16. " And be it further enacted, That if the ſaid coopers, or any of them, ſhall not make ſale according to ſuch prices as ſhall be rated, as is aforeſaid, after proclamation thereof made, that then every perſon and perſons ſo offending, ſhall for the ſame incur the pains and forfeitures mentioned in the ſaid eſtatute made the ſaid three and twentieth year of the reign of the ſaid late king; that is, to wit, for every barrel, kilderkin and firkin which ſhall be ſold at greater price than ſhall be rated and taxed, as is aforeſaid, the ſum of three ſhillings and four pence, of lawful money of *England*, whereof the one moiety to be to the queen's highneſs, her heirs and ſucceſſors, and the other moiety to ſuch perſon or perſons as will ſue for the ſame by action of debt in any court of record, wherein no protection, eſſoin or wager of law ſhall be allowed or admitted.

The forfeiture of coopers not ſelling their veſſels at the prices rated.

By the Stat. 12 *Car.* 2. *c.* 24. *ſect.* 34. and 1 *Will. ſt.* 1. *c.* 24. *ſect.* 5. Every barrel of beer, within the bills of mortality, ſhall be thirty-ſix gallons, and the barrel of Ale thirty-two gallons; and in all other places, thirty-four gallons ſhall be reckoned for a barrel of beer or ale.

Corn.

STAT. 43 *Eliz. c.* 7. [*A. D.* 1601. *Intituled*] "An act to avoid and prevent divers misdemeanours in lewd and idle persons."

Punishment for cutting of corn growing, or of such other small offences; and of a constable refusing to punish such an offender, being commanded. 1 Salk. 181. This enforced by 15 Ca. 2. c. 2. s. 2.

"Forasmuch as unlawful cutting or taking away of corn and grain growing, robbing of orchards and gardens, digging up or taking away fruit-trees, breaking of hedges, pales, or other fences, cutting or spoiling of woods or under-woods standing and growing, and such like offences, are now more commonly committed by lewd and mean persons than in former times; and that the said offences are great causes of the maintaining of idleness, and the persons which commit the same, are not for the most part able, nor have wherewith to make recompence or satisfaction; (2) Be it therefore enacted by the authority of this present parliament, That all and every such lewd person and persons, which from and after the last day of *February* now next following shall cut, or unlawfully take away any corn or grain growing, or rob any orchards or gardens, or break or cut any hedge, pales, rails or fence, or dig, or pull up, or take up any fruit-tree or trees in any orchard, garden, or elsewhere, to the intent to take and carry the same away, or shall cut or spoil any woods or under-woods, poles or trees standing, not being felony by the laws of this realm; (3) and their procurer and procurers, receiver or receivers knowing the same; (4) being thereof lawfully convicted by the confession of the party, or by the testimony of one sufficient witness, upon oath before some one justice of peace, mayor, bailiff, or other head officers (of the county, city or town corporate; (5) which said justice or other head officer shall have power by force of this statute, to minister the said oath where the offence shall be committed, or the party offending apprehended) (6) shall give the party and parties such recompence and satisfaction for his and their damages, and within such time, as by any one such justice of peace of the said county where such offence shall be done, without the liberty of any city or town corporate, or by such head officer or justice of peace within any city or town corporate, shall be ordered and appointed, and the same to be only for the first fault: (7) And if such offender or offenders shall be thought in the discretion of the said justice or justices, or other head officers, not able or sufficient, or do not make recompence or satisfaction for the said damages, in manner and form aforesaid; then the said justice or head officer shall commit all and every the said offender or offenders to some constable or constables, or other inferior officers of the city, borough, town or hamlet where the offence shall be committed, or the party apprehended, to be whipped; (8) and for every such offence, for, or of which the offender or offenders shall be eftsoons committed in form afore-limited, the person and persons so offending, to receive the said punishment of whipping.

Sect.

Sect. 2. " And be it enacted by the authority aforeſaid, That if any conſtable or inferior officer do refuſe, or do not at the Commandment of any juſtice of peace, or other head officer, execute by himſelf, or ſome other to be by him appointed, upon the offender, the puniſhment limited by this ſtatute, That in that caſe it ſhall and may be lawful for the ſaid juſtice of peace to commit the conſtable or other inferior officer ſo refuſing, or not executing the ſaid puniſhment by himſelf, or ſome other, to the common gaol of the ſaid county, city, or town corporate, there to remain without bail or mainprize, until the ſaid offender or offenders be by the ſaid conſtable or conſtables ſo refuſing, or not executing, or ſome other by his or their procurement, puniſhed and whipped, as is above-limited and declared.

The puniſhment of a conſtable refuſing to puniſh an offender.

Sect. 3. " Provided always, That no juſtice of peace, or other head officer, do execute this ſtatute for any the offences aforeſaid done unto himſelf, unleſs he be aſſociated and aſſiſted with one or more other juſtices of peace whom the offence doth not concern.

None ſhall puniſh an offence done unto himſelf.

Stat. 22 *Car.* 2. *c.* 8. [*A. D.* 1670. *Intituled*] " An act for aſcertaining the meaſures of corn and ſalt."

" Whereas there is a great variety of buſhels and other meaſures of different contents and gages uſed in ſeveral counties, cities, boroughs, ports and other places of this realm, for the meaſuring, buying and ſelling of all ſorts of grain, ſalt, and other commodities uſually bought and ſold by the buſhel, to the great defrauding and oppreſſing of the people, contrary to the Great charter, and ſundry of the good laws formerly made and enacted, That there ſhall be but one meaſure to be uſed throughout all the realm :

Enforced by 8 Annæ, c. 18. ſect. 12. 9 H. 3 ſtat. 1. c. 25. 14 Ed. 3. ſtat. 1. c. 12. 27 Ed 3 ſtat. 2. c. 10.

Sect. 2. " For future redreſs whereof, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by authority of the ſame, That this enſuing clauſe contained in a ſtatute made in the ſixteenth year of king *Charles* the Firſt, intituled, *An act for the better ordering and regulating of the office of clerk of the market, allowed and confirmed by this ſtatute, and for the reformation of falſe weights and meaſures*, (by way of proviſo, *viz.*) That ſuch meaſure as is commonly called water-meaſure, in any ports, maritime towns, or other places, ſhall be ſtill uſed and continued as formerly the ſame hath been (any thing in this ſtatute contained to the contrary hereof in any wiſe notwithſtanding) ſhall, from and after the nine and twentieth day of *September* one thouſand ſix hundred and ſeventy, be and ſtand nulled and repealed, as to the meaſuring, ſelling or buying of any ſort of corn or grain ground or unground, or ſalt within the kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*; (2) And that if any perſon or perſons, after the time aforeſaid, ſhall ſell any ſort of corn or grain, ground or unground, or any kind of ſalt, uſually ſold by the buſhel, either in open market, or any other place, by any other buſhel or meaſure, than that which is agree-

16 Car. 1. c. 19. A clauſe therein repealed.

Winchester measure only to be used.

able to the ſtandard marked in his majeſty's exchequer, commonly called the *Wincheſter* meaſure, containing eight gallons to the buſhel, and no more or leſs, and the ſaid buſhel ſtrucken even by the wood or brim of the ſame by the ſeller, and ſealed, as this act directs, he or they ſhall forfeit for every ſuch offence the ſum of forty ſhillings; (3) to be levied in ſuch manner, and ſuch other penalties for want of diſtreſs to be inflicted, as in and by the ſaid former act is directed, by the warrant or order of any one or more of his majeſty's juſtices of the peace within the county, city or place where ſuch offence ſhall be committed; which ſaid juſtices reſpectively are hereby required and enabled to ſee this ſtatute duly executed.

Forfeiture for offending againſt this act.

Penalty enlarged by 22 & 23 Car. 2. c. 12.

The penalty of mayors and all other officers permitting the uſe of any other meaſure.

Sect. 3. " And be it likewiſe further enacted by authority aforeſaid, That if any mayor, or other head officer of any city, borough or corporation, or liberty within this kingdom of *England*, dominion of *Wales*, or town of *Berwick* upon *Tweed*, ſhall knowingly and wilfully permit or ſuffer any perſon or perſons within their reſpective limits or juriſdictions, to ſell or buy any ſort of corn or grain, ground or unground, or ſalt, by any other buſhel or meaſure, or ſtrucken in any other manner than is hereby preſcribed; (2) or ſhall ſuffer within their reſpective limits or juriſdictions any other meaſure to be uſed, than is of the contents aforeſaid, and ſealed as this act directs; (3) or if upon complaint of the breach of this ſtatute, he or they ſhall not duly puniſh and reform the ſame according to the purport thereof; (4) Then he or they ſo offending, for every ſuch offence upon due proof and conviction thereof by preſentment or indictment before the juſtices of the peace of the county where ſuch offence ſhall be committed, at the general ſeſſions of the peace held for the ſame, ſhall forfeit the ſum of five pounds; (5) the one moiety thereof to the informer or proſecutor, the other moiety to the uſe of the poor of the pariſh where ſuch offence ſhall be committed, to be levied by diſtreſs and ſale of the offender's goods and chattels; and for default of ſuch diſtreſs, by impriſonment of the perſon or perſons ſo offending, till payment thereof made by warrant of the ſaid juſtices.

Clerk of the market, &c. refuſing to ſeal or mark any meaſure, his Forfeiture.

Sect. 4. " And be it further enacted, That if the clerk of the market of his majeſty's houſe within the verge, or the mayor, or other head officer, lord of the liberty, or other perſon authorized by the laws of the realm, to mark or ſeal meaſures within their reſpective juriſdictions, ſhall neglect or refuſe, being required, to ſeal or mark any buſhel, half buſhel or peck duly gaged, as is hereby before directed and appointed, ſhall forfeit for the firſt offence five pounds, and for every other offence ten pounds, to be levied, as aforeſaid; (2) or if the clerk of the market of his majeſty's houſe within the verge, ſhall take more than the lawful and accuſtomed fees; or if any other perſon or perſons ſhall exact or take from any perſon more than one penny for the ſealing and marking of a buſhel, or more than one half-penny for the ſealing or marking of a half buſhel or peck, or more than one farthing for the ſealing or marking of any meaſure containing one gallon, pottle, quart, pint or half-pint, he or they ſhall for every ſuch offence, upon due proof and conviction there-

Exacting fees, how puniſhable.

of,

of, incur the penalties mentioned and contained in the afore-named ſtatute for the ſaid offence, made in the ſixteenth year of king *Charles* the Firſt. 16 Car. 1. c. 19.

Sect. 5. " And to the end that there may be a juſt and certain meaſure (to determine all controverſies) gaged, as this act directs, (2) Be it further enacted, That at the charge of ſuch perſon or perſons reſpectively, who ſhall have the toll or profit of the market, where toll is not taken, within any city, corporation or market-town within this realm in their reſpective juriſdictions, there ſhall be before the ſaid nine and twentieth day of *September*, one meaſure of braſs provided, and chained in the publick market-place; (3) upon pain to forfeit and loſe, for every perſon ſo neglecting reſpectively, the ſum of five pounds, to be recovered and levied as is by this act directed; one moiety to the poor of the pariſh where ſuch offence ſhall be committed; the other moiety to him or them that ſhall ſue for the ſame. A meaſure of braſs to be chained in every publick market place.

Sect. 6. " And be it further enacted by the authority aforeſaid, That all and every conſtable or conſtables within this realm of *England*, in their reſpective precincts, are hereby impowered and required to ſearch and examine if any perſon or perſons uſe any other meaſure than according to the proportions aforeſaid, or ſhall ſtrike the ſame in any other manner than this act directs, or ſell or buy by a meaſure unſealed: (2) And in caſe he or they ſhall find any ſuch unſealed meaſure, to ſeize and break the ſame; and for that and every other offence againſt this act, ſhall preſent ſuch offender at the next private or quarterly ſeſſions to be held for ſuch county or place where ſuch offence ſhall be committed. Conſtables to ſearch if any perſons uſe other meaſures.

Sect. 7. " Provided always, and be it enacted, That no perſon or perſons puniſhed for any offence by virtue of this act, ſhall be again queſtioned or puniſhed for the ſame offence, by virtue or colour of any other act. Once puniſhed.

Sect. 8. " Provided always, and be it further enacted and declared, That no perſon or perſons whatſoever ſhall take any toll, or any thing in lieu thereof, but reſpectively according to ſuch proportion as the meaſures in this act limited and appointed bear unto the meaſures whereby the ſame have been heretofore uſually taken; any law, cuſtom or uſage, to the contrary notwithſtanding." Toll.

Stat. 22 & 23 *Car.* 2. *c.* 12. [*A. D.* 1670. *Intituled*] " An additional act for aſcertaining the meaſures of corn and ſalt." Enforced by 8 Ann. c. 18. ſ. 12.

" Whereas notwithſtanding there hath been great care taken in a late act, intituled, *An act for aſcertaining the meaſures of corn and ſalt, throughout the realm*; yet the ſame is in a great meaſure avoided, by ſelling in private places, as well as in publick markets, by the bag, or without meaſuring, by the buyers ſhaking of the buſhel before it be ſtruck; ſo that thoſe places who have given obedience to the ſaid act, are greatly prejudiced, and their markets likely to be loſt by ſuch undue practices: 22 Car. 2. c. 8.

No corn or salt shall be bought by the bag, without measuring. Forfeiture.

Sect. 2. " For prevention whereof, Be it enacted by the king's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by authority of the same, That every person or persons, who shall from and after the five and twentieth day of *March* next sell or buy any corn ground or unground, or salt by the bag, or without measuring, being thereunto required, or in any other manner than is by the said act directed, and that without shaking the said bushel or measure by the buyer, shall forfeit and lose, beside the penalty of the former act appointed, all corn, grain or salt, bought or sold contrary to this act, or the value thereof, to the person or persons complaining.

Sect. 3. " And whereas a great cause of the mischief hereby intended to be prevented, doth arise by the selling in private places, and so voiding, not only the intention of the said act, but to the great damage of public markets; (2) Be it further enacted, That upon complaint made to any one or more justices of the peace, That any kind of corn, ground or unground, or salt, hath been sold or bought, or delivered contrary to this act, the proof shall lie upon the defendant, to make it appear by the oaths of one or more credible witnesses, That he or they did sell or buy the same in every respect, according to this and the said former act; wherein, if such person complained of shall fail, he or they shall forfeit and lose as is by this act before directed, to be levied by distress and sale of his or their goods or chattels, restoring the overplus by warrant under the hand and seal of one or more justice, before whom he or they shall be so convicted: which penalties by this act appointed to be levied, shall by the said justice or justices be distributed, one half to the poor of the parish where such offence was committed, and the other half to the informer or prosecutor.

The proof to lie upon the defendant, when he bought the corn. Forfeiture;

how to be disposed of.

Where there is no clerk of the market, then what persons are appointed to seal the measures.

Sect. 4. " And whereas in all places where markets are holden, there is not a clerk of the market to seal all measures, as by the former act is directed: Be it therefore further enacted, That in every such case it shall and may be lawful for the mayor, bailiffs, or head officer, or other person or persons who hath the benefit of such market; and they and every of them, are hereby authorized and required to seal, or cause to be sealed, all measures duly gauged, that shall be brought unto them for that purpose; which sealing shall be as effectual in the law to all intents and purposes, as if such measure had been sealed by any clerk of the market; every such mayor, bailiff, or head officer, taking no more for so doing than is by the said act appointed.

This act shall not extend to rent-corn or tithe corn,

Sect. 5. " Provided always, and be it further enacted by the authority aforesaid, That it shall and may be lawful for every person or persons, bodies politic or corporate, or any of them to whom any salt, rent-corn, or tithe-corn is reserved, or due by any lease, grant, contract, custom or usage, to receive and take all such rent, or other duties of salt and corn, as is or shall be so reserved, or due, or the just and full value thereof in ready money, according to the proportion and quantity, and by the like measures, and in such manner, as the same were due and paid before the beginning

beginning of this parliament; any thing herein, or in any other law or ſtatute, to the contrary in any wiſe notwithſtanding."

Stat. 5 *Geo.* 2. *c.* 12. [*A. D.* 1732. *Intituled*] "An act for amending and making more effectual an act made in the firſt year of the reign of king *James* the Second, intituled, *An additional act for the improvement of Tillage.*"

"Whereas by an act made in the firſt year of the reign of his majeſty king *James* the Second, intituled, *An additional act for the improvement of tillage*, proviſion was made for examining and determining the common market prices of midling *Engliſh* corn and grain, which nevertheleſs hath been found ineffectual; therefore for the better aſcertaining the common market prices of midling *Engliſh* corn and grain, and for preventing the fraudulent importation of foreign corn and grain, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the firſt day of *June* one thouſand ſeven hundred and thirty-two, it ſhall and may be lawful to and for all and every the juſtices of peace, for the ſeveral and reſpective counties, within that part of *Great Britain* called *England*, *Wales*, and the town of *Berwick* upon *Tweed*, wherein foreign corn or grain ſhall or may be hereafter imported, and they are hereby enjoined and required, at every their quarter-ſeſſions, to give in charge in open court to the grand jury there aſſembled, to make enquiry and preſentment upon their oaths, of the common market prices of midling *Engliſh* corn and grain, of the reſpective ſorts and quantities mentioned in an act made in the two and twentieth year of the reign of his majeſty king *Charles* the Second, intituled, *An act for improvement of tillage, and breed of cattle*, as the ſame ſhall be commonly bought and ſold in every ſuch county; which inquiry and preſentment the ſaid grand jury are hereby impowered and required to make.

1 Jac. 1. c. 19.

After 1 June 1732, juſtices at quarter-ſeſſions to charge the grand jury,

who are to preſent on oath the market prices of Engliſh corn.

22 Car. 2. c. 13.

Sect. 2. "And be it further enacted by the authority aforeſaid, That ſuch preſentment ſhall be made in open court, and ſhall be certified by the ſaid juſtices in writing to his majeſty's chief officer and collector of the cuſtoms for the time being, reſiding in every ſuch port or haven, where ſuch corn and grain ſhall be imported, and ſhall be hung up in ſome publick place in the cuſtom-houſe belonging to every ſuch port or haven, to be reſorted to by all perſons for their information.

Preſentment to be made in open court, certified to collector of cuſtoms, and hung up at the cuſtom houſes for publick view.

Sect. 3. "And be it further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *June* one thouſand ſeven hundred and thirty-two, the cuſtom and duty of foreign corn and grain imported into that part of *Great Britain* called *England*, *Wales*, and the town of *Berwick* upon *Tweed*, appointed to be paid by the ſaid act made in the two and twentieth year of the reign of his majeſty king *Charles* the Second, ſhall be collected and paid according to the prices contained in ſuch reſpective certificates as aforeſaid, and not otherwiſe; any thing in the ſaid act made in

Duties on foreign corn to be paid according to the prices in the certificates.

in the first year of the reign of his majesty king *James* the Second to the contrary notwithstanding.

Not to extend to London. 1 Jac. 2. c. 19.

Sect. 4. "Provided always, and be it further enacted by the authority aforesaid, That nothing in this act contained shall extend, or be construed to extend, to prejudice or affect the authority given by the said act made in the first year of the reign of his majesty king *James* the Second, to the mayor, aldermen, and justices of the peace of the city of *London*; but that the said mayor, aldermen, and justices of the peace may continue to exercise the same at the times, and in the manner therein mentioned; any thing in this act contained to the contrary notwithstanding.

No warrant, &c. to be granted for transporting any foreign corn to any other English haven, after importation.

Sect. 5. "And be it further enacted by the authority aforesaid, That from and after the said first day of *June* one thousand seven hundred and thirty-two, no warrant, sufferance, coast cocquet, *Transire*, or let-pass whatsoever, shall be granted or allowed for transporting, conveying or carrying forth to the open sea in any ship or vessel from any port or haven within that part of *Great Britain* called *England*, *Wales*, and the town of *Berwick* upon *Tweed*, to any other port or haven of the same, any foreign corn or grain after the importation thereof; and that no person or persons whatsoever, from and after the said first day of *June* one thousand seven hundred and thirty-two, shall directly or indirectly transport, convey, or carry forth to the open sea, or cause or procure to be transported, conveyed or carried forth to the open sea, out of or from any port, haven, creek or road, or member thereof, within that part of *Great Britain* called *England*, *Wales*, and the town of *Berwick* upon *Tweed*, in order to be landed or discharged in any other port or place within the same, or lade, or cause or procure to be laden in any ship or vessel, in order to be landed or discharged in any other port, haven, or place, within the same,

Foreign corn so transported forfeited,

any foreign corn or grain, or any foreign corn or grain mixed with *English* corn or grain, after the importation thereof, under the penalties and forfeitures herein after mentioned, that is to say, That all such corn and grain, that shall be transported, conveyed or carried forth into the open

and 20 s. per bushel;

sea, or laden contrary to this act, shall be forfeited; and that every offender therein shall forfeit the sum of twenty shillings for every bushel of such corn or grain so transported, conveyed or carried forth into the open sea, or

vessel and tackle forfeited.

laden contrary to this act; and moreover the ship or vessel, upon which such corn or grain shall be so transported, conveyed, or carried forth into the open sea, or laden, and all her guns, tackle, apparel and furniture shall be forfeited; the one moiety of all which penalties and forfeitures shall be to the king's majesty, his heirs and successors, and the other moiety to him or them, who will sue for the same, to be recovered by action of debt, bill, plaint or information in any of his majesty's courts of record at *Westminster*, wherein no essoign, protection, or wager of law shall be

Three months imprisonment on assisting in such transportation,

allowed; and that the master and mariners of any such ship or vessel, wherein any such offence shall be committed, knowing such offence, and wittingly and willingly aiding and assisting thereunto, and being thereof duly convicted in any such court of record as aforesaid, shall be imprisoned for the space of three months without bail or mainprize.

Stat. 11 *Geo.* 2. *c.* 22. [*A. D.* 1738. *Intituled*] "An act for puniſhing ſuch perſons as ſhall do injuries and violences to the perſons or properties of his majeſty's ſubjects, with intent to hinder the exportation of corn."

"Whereas many diſorderly and evil-minded perſons have of late frequently aſſembled themſelves in great numbers, and committed great violences, and done many injuries to the perſons and properties of his majeſty's ſubjects, with intent to hinder the exportation of corn, whereby many of his majeſty's ſubjects have been deterred from buying of corn and grain, and following their lawful buſineſs therein, to their great loſs and damage, as well as the great damage and prejudice of the farmers and landholders of this kingdom, and of the nation in general; for the better preventing ſuch wicked and diſorderly practices, and more eaſily and effectually bringing ſuch offenders to condign puniſhment, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That if any perſon or perſons ſhall, from and after the four and twentieth day of *June* one thouſand ſeven hundred and thirty-eight, wilfully and maliciouſly beat, wound, or uſe any other violence to or upon any perſon or perſons, with intent to deter or hinder him or them from buying of corn or grain in any market or other place within this kingdom; or ſhall unlawfully ſtop or ſeize upon any waggon, cart or other carriage, or horſe, loaded with wheat, flour, meal, malt or other grain, in or on the way to or from any city, market town, or ſea port of this kingdom, and wilfully and maliciouſly break, cut, ſeparate or deſtroy the ſame, or any part thereof, or the harneſs of the horſes drawing the ſame; or ſhall unlawfully take off, drive away, kill or wound any of ſuch horſes, or unlawfully beat or wound the driver or drivers of ſuch waggon, cart or other carriage, or horſe, ſo loaded, in order to ſtop the ſame; or ſhall, by cutting of the ſacks, or otherwiſe, ſcatter or throw abroad ſuch wheat, flour, meal, malt or other grain, or ſhall take and carry away, ſpoil or damage the ſame, or any part thereof; every and all ſuch perſon and perſons being thereof lawfully convicted before any two or more juſtices of the peace of the county, ſhire, ſtewartry, riding, diviſion, town or place corporate, wherein ſuch offence or offences ſhall be committed, or before the juſtices of the peace in open ſeſſions (who are hereby authorized and impowered ſummarily and finally to hear and determine the ſame) ſhall be ſent to the common gaol, or to the houſe of correction, there to continue and be kept to hard labour for any time not exceeding the ſpace of three months, nor leſs than one month; and ſhall by the ſame juſtices be alſo ordered to be once publickly and openly whipped by the maſter or keeper of ſuch gaol, or houſe of correction, in ſuch city, market town or ſea port, in or near to which ſuch offence ſhall be committed, on the firſt:

Preamble.

Perſons uſing violence to hinder the purchaſe or carriage of corn.

to be impriſoned,

and publickly whipped.

firſt convenient market day, at the market croſs or market place there, between the hours of eleven and two of the clock.

Committing the like offences a ſecond time,

Sect. 2. "And be it further enacted by the authority aforeſaid, That if any ſuch perſon or perſons ſo convicted ſhall commit any of the offences aforeſaid a ſecond time; or if, from and after the ſaid four and twentieth day of *June* one thouſand ſeven hundred and thirty-eight, any perſon or perſons ſhall wilfully and maliciouſly pull, throw down, or otherwiſe deſtroy any ſtorehouſe or granary, or other place where corn ſhall be then kept in order to be exported; or ſhall unlawfully enter any ſuch ſtorehouſe, granary or other place, and take and carry away any corn, flour, meal or grain therefrom, or ſhall throw abroad or ſpoil the ſame, or any part thereof; or ſhall unlawfully enter on board any ſhip, barge, boat, or veſſel, and ſhall wilfully and maliciouſly take and carry away, caſt, or throw out therefrom, or otherwiſe ſpoil or damage, any meal, flour, wheat or grain therein intended for exportation; every perſon ſo offending, and being thereof lawfully convicted, ſhall be adjudged guilty of felony, and ſhall be tranſported for the ſpace of ſeven years, in like manner as other felons are directed to be tranſported by the laws and ſtatutes of this realm; and if any ſuch offender ſo tranſported ſhall return to this kingdom before the expiration of the ſaid ſeven years, he or ſhe ſhall ſuffer death as a felon without benefit of clergy.

deſtroying granaries or the corn therein,

or in veſſels, &c.

Felony.

Proviſoes.

Sect. 3. "Provided always, That no attainder for any offence made felony by virtue of this act ſhall make or work any corruption of blood, loſs of dower, or diſinheritance of heir or heirs.

Sect. 4. Provided alſo, That no perſon, who ſhall be puniſhed for any offence by virtue of this act, ſhall be puniſhed for the ſame offence by virtue of any other law or ſtatute whatſoever.

Satisfaction for ſuch damages recoverable from the hundred,

Sect. 5. "And be it further enacted by the authority aforeſaid, That from and after the four and twentieth day of *June* one thouſand ſeven hundred and thirty-eight, the inhabitants of every hundred in that part of *Great Britain* called *England*, wherein any ſuch offence as aforeſaid ſhall be committed, ſhall make full ſatisfaction and amends to all and every the perſon and perſons, their executors and adminiſtrators, for the damages they ſhall have ſuſtained, or ſuffered by any injury or violence done to their properties by any offender or offenders againſt this act; and that every perſon and perſons, who ſhall ſuſtain damages in their properties by any of the ſaid offences, ſhall and are hereby enabled to ſue for and recover ſuch his or their damages (the ſum to be recovered not exceeding one hundred pounds) againſt the ſaid hundred, who by this act ſhall be made liable to anſwer all or any part thereof; ſuch damages to be ſued for, levied and raiſed in ſuch manner and form, and by and under the like methods and directions, as are preſcribed and mentioned in caſes of actions for robberies on the highway, in and by an act made in the ſeven and twentieth year of the reign of queen *Elizabeth*, intituled, *An act for the following hue and cry*; and by one other act made in the eighth year of the reign of his preſent majeſty, intituled, *An act for the amend-*

(not exceeding 100 l.)

as in caſes of robbery.

ment

ment of the laws relating to the actions on the ſtatute of hue and cry, except ſo much thereof as relates to giving, leaving, or publiſhing notice, or making freſh ſuit and hue and cry, or any other matter otherwiſe provided for by this act.

Sect. 6. " Provided nevertheleſs, and be it further enacted by the authority aforeſaid, That no perſon or perſons ſhall be enabled to recover any damages by virtue of this act, unleſs he or they by themſelves or by their ſervants, within two days after ſuch damage or injury done him or them by any ſuch offender or offenders as aforeſaid, ſhall give due notice of ſuch offence done and committed to one of the conſtables of the hundred, or to the conſtable, borſholder, headborough or tithingman of the town, pariſh, village, hamlet or tithing, in or near which ſuch fact ſhall be committed; and ſhall within ten days after ſuch notice give in his or their examinations upon oath, or the examination upon oath, of his or their ſervants being preſent at the time of the fact being committed, or having the care of ſuch his or their properties, to which ſuch damage or injury ſhall be done, before any juſtice of the peace of the county, liberty or diviſion where ſuch fact ſhall be committed, whether he or they do know the perſon or perſons that committed ſuch fact, or any of them; and if upon ſuch examination it be confeſſed, that he or they do know the perſon or perſons that committed the ſaid fact, or any of them, that then he or they ſo confeſſing ſhall be bound by recognizance to proſecute ſuch offender or offenders according to this act, or otherwiſe according to the laws of the realm.

But notice is to be given within 2 days after the fact to a conſtable;

and examination upon oath within 10 days.

Sect. 7. " Provided alſo, and be it enacted by the authority aforeſaid, That where any offence ſhall be committed againſt this act, and any of the ſaid offenders ſhall be apprehended and lawfully convicted of ſuch offence within the ſpace of twelve months after the offence committed; no hundred or franchiſe therein ſhall in any wiſe be ſubject or liable to make any ſatisfaction to the party or parties injured for the damages he or they ſhall have ſuſtained; any thing in this act to the contrary notwithſtanding.

If any one of the offenders be convicted within twelve months, the hundred releaſed.

Sect. 8. " Provided alſo, That no perſon, who ſhall ſuſtain any damage by reaſon of any offence to be committed by any offender contrary to this act, ſhall be enabled hereby to ſue or bring any action againſt any hundred where ſuch offence ſhall be committed, till after the expiration of one year; nor unleſs the party or parties ſuſtaining ſuch damage, ſhall commence his, her, or their action or ſuit within two years next after the offence ſhall be committed."

Actions not to be brought againſt hundreds under 1, or after 2 years.

For other matters, ſee **Badgers, Foreſtalling.**

Coroner.

CORONER, (*coronator, a corona*) is an ancient officer of this land, (for mention is made of his office in king *Athelſtan*'s charter to *Beverley*, *an.* 925) and is ſo called, becauſe he deals wholly for the king and crown. There are four of them commonly in every county, in ſome fewer, and in ſome counties but one: they are choſen by the freeholders of the ſame, by the king's writ, and not made by letters patent. *Crompt. Juriſd. f.* 126. This officer, by the ſtatute of *Weſtm.* 1. *c.* 10. ought to be a ſufficient perſon, that is, the moſt wiſe and diſcreet knight that beſt would and might attend upon ſuch an office. There is a writ in the *Regiſt. Niſi ſit miles*, *f.* 177. *b.* whereby it appears, it was ſufficient cauſe to remove a *coroner* choſen, if he were not a knight, and had not an hundred ſhillings rent of freehold. The lord chief juſtice of the *King's Bench* is the *ſovereign coroner* of the whole realm in perſon, *i. e.* whereſoever he is. *Lib. Aſſiſarum*, *f.* 49. *Coke*, *lib.* 4. *Caſe of Wardens*, *&c. of Sadlers*, *f.* 57. *b.* The office of a *coroner* eſpecially concerns the pleas of the crown; but what anciently belonged to him, read at large in *Bracton*, *lib.* 3. *tract.* 2. *cap.* 5, 6, 7 & 8. *Britton*, *cap.* 1. *Fleta*, *lib.* 1. *cap.* 18. and *Horn's Mirror*, *lib.* 1. *cap.* Del office del Coroners. But more aptly for the preſent times, *Staundf. Pl. Cor. lib.* 1. *cap.* 51.

There are alſo certain ſpecial *coroners* within divers liberties, as well as thoſe ordinary officers in every county; as *the coroners of the verge*, which is a certain compaſs about the king's court, whom *Crompt.* in his *Juriſd. fol.* 102. calls *the coroner of the king's houſe*; of whoſe authority ſee *Coke's Rep. lib.* 4. *f.* 46. By certain charters belonging to ſome colleges and corporations, they are licenſed to appoint their *coroner* within their own precincts. Of this office ſee alſo 4 *Inſt. fol.* 271. *Smith de Rep. Angl. lib.* 2. *cap.* 21. and *Lamb. Eiren. cap.* 3. *pag.* 380. And of the coroner's office in *Scotland*, read *Skene*, *verbo Iter.*

The coroner, though *in original later than the ſheriff*, was nevertheleſs very ancient; he was of the two the greater ſervant or officer. His work was to inquire upon view of manſlaughter, and by indictment of all felonies as done *contra coronam*, which formerly were only *contra pacem*, and triable only by appeal; as alſo he was to inquire of all eſcheats and forfeitures, and them to ſeize; he was alſo to receive appeals of felonies, and to keep the rolls of the crown pleas within the county. It is evident he was an officer in *Alfred*'s time; for that king put a judge to death for ſentencing one to ſuffer death upon the coroner's record, without allowing the delinquent liberty of traverſe. This officer was made alſo by election of the freeholders in their county-court, as the ſheriff was, and from amongſt the men of chiefeſt rank in the county, and ſworn in their preſence. *Bacon of Government* 66.

His name is derived *a corona*, and ſo called, becauſe he is an officer of the crown, and hath conuſance of ſome pleas, which are called *Placita coronæ*. 2 *Inſt.* 31.

Coroners in every county, and ſheriffs, were ordained to keep the peace, when the earls diſmiſſed themſelves of the cuſtody of the counties, and bailiffs in place of hundreds. 2 *Inſt.* 31. cites *The Mirror*, *cap.* 1. *ſ.* 3.

They are of ſo great antiquity, that their *commencement* is not known; *per Dodderidge* J. 3 *Bulſt.* 176. *Paſch.* 14 *Jac.*

Stat. 4 *Ed.* 1. *ſt.* 2. *de officio coronatoris* [*A. D.* 1275. *Intituled*] "Of what things a coroner ſhall inquire."

"A coroner of our lord the king ought to inquire of theſe things, if he be certified by the king's bailiffs, or other honeſt men of the country: Firſt, he ſhall go to the places where any be ſlain, or ſuddenly dead, or wounded, or where houſes are broken, or where treaſure is ſaid to be found, and ſhall forthwith command four of the next towns, or five or ſix, to appear before him in ſuch a place; (2) and when they are come thither, the coroner upon the oath of them ſhall inquire in this manner, that is to wit, If they know where the perſon was ſlain, whether it were in any houſe, field, bed, tavern, or company, and who were there: Likewiſe it is to be inquired, who were culpable either of the act or of the force, and who were preſent, either men or women, and of what age ſoever they be (if they can ſpeak, or have any diſcretion;) (3) and how many ſoever be found culpable by inquiſition in any of the manners aforeſaid, they ſhall be taken and delivered to the ſheriff, and ſhall be committed to the gaol; (4) and ſuch as be founden, and be not culpable, ſhall be attached until the coming of the juſtices, and their names ſhall be written in rolls. (5) If it fortune any ſuch man be ſlain, which is found in the fields or in the woods, firſt it is to be inquired, whether he were ſlain in the ſame place, or not; (6) and if he were brought and laid there, they ſhall do ſo much as they can to follow their ſteps that brought the body thither, whether he were brought upon a horſe or in a cart: (7) It ſhall be inquired alſo, if the dead perſon were known, or elſe a ſtranger, and where he lay the night before; (8) and if any be found culpable of the murther, the coroner ſhall immediately go unto his houſe, and ſhall inquire what goods he hath, and what corn he hath in his graunge; and if he be a freeman, they ſhall inquire how much land he hath, and what it is worth yearly; and further, what corn he hath upon the ground. (9) And when they have thus inquired upon every thing, they ſhall cauſe all the land, corn and goods to be valued, in like manner as if they ſhould be ſold incontinently, and thereupon they ſhall be delivered to the whole townſhip, which ſhall be anſwerable before the juſtices for all; (10) and likewiſe of his freehold, how much it is worth yearly over and above the ſervice due to the lords of the fee; and the land ſhall remain in the king's hands, until the lords of the fee have made

Murther.

Inquiry of the offenders.

A man found ſlain.

The murtherer found culpable.

fine for it. (11) And immediately, upon theſe things being inquired, the bodies of ſuch perſons being dead or ſlain ſhall be buried.

Perſons drowned or ſuddenly dead.

Sect. 2. "In like manner it is to be inquired of them that be drowned, or ſuddenly dead, and after ſuch bodies are to be ſeen, whether they were ſo drowned, or ſlain, or ſtrangled by the ſign of a cord tied ſtreight about their necks, or about any of their members, or upon any other hurt found upon their bodies, whereupon they ſhall proceed in the form aboveſaid; (2) and if they were not ſlain, then ought the coroner to attach the finders, and all other in the company. (3) A coroner alſo ought to inquire of treaſure that is found, who were the finders, and likewiſe who is ſuſpected thereof; and that may be well perceived where one liveth riotouſly, haunting taverns, and hath done ſo of long time; hereupon he may be attached for this ſuſpicion by four, or ſix or more pledges, if he may be found. (4) Further, if any be appealed of rape, he muſt be attached, if the appeal be freſh, and they muſt ſee apparent ſign of truth by effuſion of blood, or an open cry made; (5) and ſuch ſhall be attached by four or ſix pledges, if they may be found: (6) If the appeal were without cry, or without any manifeſt ſign or token, two pledges ſhall be ſufficient. (7) Upon appeal of wounds and ſuch like, ſpecially if the wounds be mortal, the parties appealed ſhall be taken immediately and kept until it be known perfectly, whether he that is hurt ſhall recover or not; (8) and if he die, the defendant ſhall be kept; and if he recover health, they ſhall be attached by four or ſix pledges, after as the wound is great or ſmall. (9) If it be for a maim, he ſhall find no leſs than four pledges; if it be for a ſmall wound, two pledges ſhall ſuffice. (10) Alſo all wounds ought to be viewed, the length, breadth and deepneſs, and with what weapons, and in what part of the body the wound or hurt is, and how many be culpable, and how many wounds there be, and who gave the wound; (11) all which things muſt be inrolled in the roll of the coroners. (12) Moreover, if any be appealed of any act done, as principal, they that be appealed of the force ſhall be attached alſo, and ſurely kept in ward, until the principals be attainted or delivered. (13) Concerning horſes, boats, carts, *&c.* whereby any are ſlain that properly are called *Deodands*, they ſhall be valued and delivered unto the towns, as before is ſaid. (14) Concerning wreck of the ſea, whereſoever it be found, if any lay hands on it, he ſhall be attached by ſufficient pledges, and the price of the wreck ſhall be valued and delivered to the towns. (15) If any be ſuſpected of the death of any man being in danger of life, he ſhall be taken and impriſoned, as before is ſaid. (16) In like manner huy ſhall be levied for all murthers, burglaries, and for men ſlain, or in peril to be ſlain, as otherwiſe is uſed in *England*, and all ſhall follow the huy and ſteps as near as can be; and he that doth not, and is convict thereupon, ſhall be attached to be afore the juſtices of the gaol, *&c.*"

Bro. Coron. 175. Fitz. Coron. 241, 265, 436, 446. Treaſure found.

Appeal of rape.

Appeal of wounds or maim. Raſt. 45.

Principals and acceſſary.

Deodands.

Wreck of the ſea.

Suſpected perſons.

Huy and cry. 3 H. 7. c. 1. 12 Ann. ſt. 2. c. 18.

By ſtat. 14 *Ed.* 3. *ſt.* 1. *c.* 8. [*A. D.* 1340.] "No coroner ſhall be choſen, unleſs he have land in fee ſufficient in the ſame county, whereof he may anſwer to all manner of people."

Stat.

Stat. 28 *Ed.* 3. *c.* 6. [*A. D.* 1354. *Intituled*] "Who ſhall be coroners, and by whom, and where they ſhall be choſen."

Item it is ordained and accorded, That all coroners of the counties ſhall be choſen in the full counties, by the commons of the ſame counties, of the moſt meet and moſt lawful people that ſhall be found in the ſaid counties to execute the ſaid office; (2) ſaved always to the king and other lords which ought to make ſuch coroners, their ſeigniories and franchiſes." 3 Ed. 1. c. 10. Raſt. 133.

Stat. 25 *Geo.* 2. *c.* 29. [*A. D.* 1752. *Intituled*] "An act for giving a proper reward to coroners for the due execution of their office; and for the amoval of coroners upon a lawful conviction for certain miſdemeanors."

"Whereas the office of coroner is a very ancient and neceſſary office: and whereas by an act made in the third year of the reign of king *Henry* the Seventh, reciting that coroners had not, nor ought to have, any thing by the law for their office doing; which oft-time had been the occaſion that coroners had been remiſs in doing their office: It was ordained, That a coroner ſhould have for his fee, upon every inquiſition taken upon the view of the body ſlain, thirteen ſhillings and four pence, of the goods and chattels of him that is the ſlayer and murderer, if he have any goods; and if he have no goods, of ſuch amerciaments as ſhould fortune any townſhip to be amerced, for the eſcape of the murderer: And whereas the ſaid fee of thirteen ſhillings and four pence, due only upon an inquiſition taken upon the view of a body ſlain or murdered, and payable only out of the goods and chattels of the ſlayer or murderer, or out of the amerciaments impoſed upon the townſhip, if the murderer eſcape, is not an adequate reward for the general execution of the ſaid office: To the intent therefore that coroners may be encouraged to execute their office with diligence and integrity; Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That for every inquiſition, not taken upon the view of a body dying in a gaol or priſon, which from and after the twenty-fourth day of *June* one thouſand ſeven hundred and fifty-two, ſhall be duly taken within that part of *Great Britain* called *England*, by any coroner or coroners, in any townſhip or place, contributory to the rates directed by an act made in the twelfth year of the reign of his preſent majeſty, intituled, *An act for the more eaſy aſſeſſing, collecting and levying of county rates*, the ſum of twenty ſhillings; and for every mile which he or they ſhall be compelled to travel, from the uſual place of his or their abode, to take ſuch inquiſition, the further ſum of nine pence, over and above the ſaid ſum of twenty ſhillings, ſhall be paid to him or them out of any monies ariſing from the rates before-mentioned, by order of the juſtices of the peace in their general or quarter ſeſſions aſſembled, for the county, riding, diviſion or liberty where ſuch inquiſition ſhall have been taken, or the major

3 Hen 7. c. 1.

Coroner to be paid 20 s. for every inquiſition taken in any townſhip contributing to the county rates, (except on bodies dying in gaol) and 9 d. for every mile he ſhall be obliged to travel, to be paid out of the county rates.

jor part of them, are hereby authorized and directed to make; for which order no fee or reward ſhall be paid to the clerk of the peace or any other officer.

and for every inquiſition on bodies dying in gaol, as the juſtices ſhall think fit;

Sect. 2. "And be it further enacted by the authority aforeſaid, That for every inquiſition which, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and fifty-two, ſhall be duly taken upon the view of a body dying in any gaol or priſon, within that part of *Great Britain* called *England*, by any coroner or coroners of a county, ſo much money not exceeding the ſum of twenty ſhillings, ſhall be paid to him or them, as the juſtices of the peace in their general or quarter ſeſſions aſſembled for the county, riding or diviſion wherein ſuch gaol or priſon is ſituate, or the major part of them, ſhall think fit to allow, as a recompence for his or their labour, pains and charges in taking ſuch inquiſition, to be paid in like manner by order of the ſaid juſtices, or the major part of them, out of any monies ariſing from the ſaid rates; which order the ſaid juſtices of the peace ſo aſſembled, or the major part of them, are hereby authorized and directed to make; for which order no fee or reward ſhall be paid to the clerk of the peace or any other officer.

and for inquiſitions on a body ſlain, 13s. 4d. over and above.

Sect. 3. "Provided nevertheleſs, That over and above the recompence hereby limited and appointed for inquiſitions taken as aforeſaid, the coroner or coroners who ſhall take an inquiſition upon the view of a body ſlain or murdered, ſhall alſo have the fee of thirteen ſhillings and four pence, payable by virtue of the ſaid act made in the third year of the reign of king *Henry* the Seventh, out of the goods and chattels of the ſlayer or murderer, or out of the amerciaments impoſed upon the townſhip, if the ſlayer and murderer eſcape; any thing in this act contained to the contrary thereof in any wiſe notwithſtanding.

Coroner taking more, guilty of extortion.

Sect. 4. "Provided alſo, and be it declared and enacted by the authority aforeſaid, That no coroner, to whom any benefit is given by this act, ſhall, by colour of his office, or upon any pretext whatſoever, take for his office doing, in caſe of the death of any perſon, any fee or reward, other than the ſaid fee of thirteen ſhillings and four pence, limited as is aforeſaid by the ſaid act made in the third year of the reign of king *Henry* the Seventh, and other than the recompence hereby limited and appointed; upon pain of being deemed guilty of extortion.

Coroners for particular places excepted.

Sect. 5. "Provided likewiſe, and be it further enacted by the authority aforeſaid, That no coroner of the king's houſhold, and of the verge of the king's palaces, nor any coroner of the admiralty, nor any coroner of the county palatine of *Durham*, nor any coroner of the city of *London* and borough of *Southwark*, or of any franchiſes belonging to the ſaid city; nor any coroner of any city, borough, town, liberty or franchiſe, which is not contributory to the rates directed by the ſaid act, made in the twelfth year of the reign of his preſent majeſty, or within which ſuch rates have not been uſually aſſeſſed, ſhall be intitled to any fee, recompence or benefit given to or provided for coroners by this act; but that it ſhall and may be lawful for all ſuch coroners as are laſt-mentioned, to have and receive all ſuch fees, ſalaries, wages and allowances, as they were intitled

intitled to by law before the making of this act, or as shall be given or allowed to them by the person or persons by whom they have been or shall be appointed.

Sect. 6. " And be it further enacted by the authority aforesaid, That if any coroner, who is not appointed by virtue of an annual election or nomination, or whose office of coroner is not annexed to any other office, shall from and after the said twenty-fourth day of *June* one thousand seven hundred and fifty-two, be lawfully convicted of extortion, or wilful neglect of his duty, or misdemeanor in his office, it shall be lawful for the court before whom he shall be so convicted, to adjudge that he shall be amoved from his office; and thereupon, if such coroner shall have been elected by the freeholders of any county, a writ shall issue for the amoving him from his office, and electing another coroner in his stead, in such manner as writs for the amoval or discharge of coroners, and for electing coroners in their stead, are in any cases already directed by law: and if the coroner so convicted shall have been appointed by the lord or lords of any liberty or franchise, or in any other manner than by the election of the freeholders of any county, the lord or lords of such liberty or franchise, or the person or persons intitled to the nomination or appointment of any such coroner, shall, upon notice of such judgment of amoval, nominate and appoint another person to be coroner in his stead.

Coroner convicted of misdemeanor in his office, to be amoved.

Mr. Serjeant *Poole* and Mr. *Clayton* shewed cause against a rule which had been moved for by Mr. *Norton*, " to quash a presentment or inquisition found by the *grand jury* of the county of *York*, at the general " session of *Oyer and Terminer* for that county:" which Mr. *Norton* objected to, as being *coram non judice*; for, he said, the grand jury had no authority to make such a presentment, or find such an inquisition, *under their* general charge from the judge of assize, whatever might be the case if the judge had *particularly* directed and presided over an inquisition of this kind, on the neglect of the coroner. The fact found was, " That the mare of *John Killinghall*, Esq; was the cause of the death of one *William Stelling*; " and was of the value of 10*l.*" It happened that the coroner had not taken any inquisition at all, upon this death: so that the lord of the manor finding himself likely to lose his deodand, had made this application at the assizes, where the grand jury found this inquisition or presentment; which was afterwards removed hither by *certiorari*. Mr. Serjeant *Poole* and Mr. *Clayton* endeavoured to support it. This inquisition, they said, before a grand jury is *traverſable*, (which a *coroner*'s inquisition is *not*;) and therefore does nobody any injury. And as the coroner had taken *none* at all upon the present occasion, *this method* was *necessary* to be taken, in order to come at the deodand. 1 *H. H. P. C.* 419. *c.* 32. of deodands, shews most expressly that this may be done before commissioners of gaol delivery, *Oyer and Terminer*, or of the peace, if omitted by the coroner. So does 1 *H. P. C.* 414. in treating of inquisitions; where *Laughton*'s case, *H.* 37 *Eliz.* is cited; and it is said to be " inquisible before the justices of *oyer and Terminer*, yea, or of the peace; and that it had been " adjudged

Inquisition on an untimely death may be taken by justices of gaol-delivery, oyer and terminer, or of the peace, if omitted by the coroner. 1 Bur. Rep. 17, 18. Mich. 30 Geo 2. Rex v. Killinghall.

" adjudged accordingly." *M.* 1656. in *Greave*'s caſe. 3 *Inſt.* 55. *c.* 8. *Note b. in margine*, makes a difference between inquiſitions taken before juſtices of the peace as to having a traverſe. 2 *Rol. Abr.* 96. *pl.* 3. proves that an indictment may be taken before juſtices of peace, and of *Over and Terminer*. 2 *Lev.* 140. *Rex* v. *Parker*, is in point, " That the " coroner's omiſſion may be ſupplied by commiſſion of inquiry; or the " juſtices of peace or of aſſize may inquire of it, without commiſſion." 2 *H. H. P. C.* 58. *cap.* 8. concerning the coroner and his court, and his authority in pleas of the crown, proves that grand juries have this juriſdiction in caſe the coroner neglects it. 2 *H. H. P. C.* 59. *ad idem.* It is there ſaid " that juſtices of peace, or *Oyer and Terminer*, or of the King's " Bench, may inquire, if the coroner do not: but that THAT preſent- " ment is traverſable, which the preſentment of the coroner of a *felo de ſe* " is *not*." Upon theſe authorities, they ſaid, my lord *Falconbridge* (the lord of the manor) was adviſed to take this method: but the judge of aſſize (Mr. Juſtice *Birch*) declined to meddle with it, or to have the inquiſition taken before him *particularly*, or to give any direction about it. They added theſe caſes alſo, 1 *Ventr.* 352. in the note at bottom. *Poph.* 209. Anon'; and S. C. (apparently) in *Noy* 87. " It *may* be done *before juſtices of peace*." 1 *Ventr.* 181, 182. *Stalack*'s caſe. " If a coroner omits " to inquire, this court may do it, as ſupreme coroner of *England*; or " may make commiſſioners to inquire: or commiſſion of *Oyer and Ter-* " *miner* may inquire. But then it is not *ſuper viſum corporis*; and there- " fore may be traverſed." Mr. *Norton contra.* This is a preſentment *ex parte*; and a preſentment of *intitling*, in order to found an *odious and ſuperſtitious* claim; and *all tranſacted* in ſecret. The caſes cited only prove, " That, in default of the coroner's having inquired, the juſtices " of *Oyer and Terminer*, and of the peace, may make the inquiry; and " that it is traverſable." They ſay, that we could not have traverſed the *coroner's* inquiſition: (which, however, I *deny:*) but this we may traverſe; and therefore can't be injured by it. But it will be ſaid " that the *putting* " a man to a traverſe, is *no injury?*" 4 *Inſt.* 197, 198. enters largely into the ſubject of traverſes; and condemns ſecret inqueſts and officees. Now this is an office of intitling; and therefore ought to be *publickly and openly* found. Lord *Mansfield:* By expreſs ſtatutes. And I remember a caſe of the late duke of *Buckingham*'s heirs; where, upon application to the court of Exchequer, notice was directed to be given: though, in general, *notice* is *not* neceſſary. Therefore I think *this* queſtion can't be ſupported. And inquiſitions before the coroner *are* traverſable. [*V.* 2 *H. H. P. C.* 416. where that author declares his own opinion accordingly.] Mr. Juſt. *Deniſon:* I think it cannot be ſupported. Mr. Juſt. *Foſter:* I am of the ſame opinion. By the court, rule to quaſh the preſentment made abſolute.

Leave to take new inquiſition on view of the body. 1 Stran. 167. Rex v. Saunders.

Mr. *Yorke* moved for leave for the coroner to take up the body, and take a new inquiſition, according to 2 *Sid.* 101. *Salk.* 377. which was granted; and it was ſaid the coroner could not do it without leave of the court.

The

The court granted a rule for the coroner of *Wenlock* in *Com' Salop*, to take up a body, in order for a new inquiſition, the former having been quaſhed. Rule for coroner to take up the body. 1 Stran. 533. Anon'.

Cottage.

A Cottage (Sax. *Cote*) is a little houſe for habitation, without any land belonging to it. *Wood, b. 3. c. 3.*

Stat. 31 *Eliz. c. 7.* [*A. D.* 1589. *Intituled*] "An act againſt the erecting and maintaining of cottages."

"For the avoiding of the great inconveniencies which are found by experience to grow by the erecting and building of great numbers and multitude of cottages, which are daily more and more increaſed in many parts of this realm; (2) Be it enacted by the queen's moſt excellent majeſty, and the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That after the end of this ſeſſion of parliament, no perſon ſhall within this realm of *England* make, build or erect, or cauſe to be made, builded or erected, any manner of cottage for habitation or dwelling, nor convert or ordain any building or houſing made, or hereafter to be made, to be uſed as a cottage for habitation or dwelling, unleſs the ſame perſon do aſſign and lay to the ſame cottage or building, four acres of ground at the leaſt, to be accounted according to the ſtatute or ordinance *de terris menſurandis*, being his or her own freehold or inheritance lying near to the ſaid cottage, to be continually occupied and manured therewith, ſo long as the ſame cottage ſhall be inhabited; (3) upon pain that every ſuch offender ſhall forfeit to our ſovereign lady the queen's majeſty, her heirs and ſucceſſors, ten pounds of lawful money of *England*, for every ſuch offence. Penalty for building a cottage without four acres of land to it, and the like for placing or ſuffering inmates. 2 Bulſtr. 264. Godbolt 383. pl. 470. 2 Inſt. 736. Hob. 250. 1 Ventr. 107. 1 Sid 359, 360

Sect. 2. "And be it further enacted by the authority aforeſaid, That every perſon which, after the end of this ſeſſion of parliament, ſhall willingly uphold, maintain and continue any ſuch cottage hereafter to be erected, converted or ordained for habitation or dwelling, whereunto four acres of ground, as is aforeſaid, ſhall not be aſſigned and laid to be uſed and occupied with the ſame, ſhall forfeit to our ſaid ſovereign lady the queen's majeſty, her heirs and ſucceſſors, forty ſhillings for every month that any ſuch cottage ſhall be by him or them upholden, maintained and continued. Cro. Jac. 603. The forfeiture for continuing of a new cottage.

More families than one may not be placed inone cottage, &c. 43 El. c. 2. ſ. 5.

Sect. 3. " Provided alſo, and be it enacted, That from and after the feaſt of *All-Saints* next coming, there ſhall not be any inmate, or more families or houſhoulds than one, dwelling or inhabiting in any one cottage, made, or to be made or erected, (2) upon pain that every owner or occupier of any ſuch cottage, placing, or willingly ſuffering any ſuch inmate, or other family than one, ſhall forfeit and loſe to the lord of the leet, within which ſuch cottage ſhall be, the ſum of ten ſhillings of lawful money of *England*, for every month that any ſuch inmate, or other family than one ſhall dwell or inhabit in any *one* cottage as aforeſaid: (3) And that all and every lord and lords of leet and leets, and their ſtewards within the precinct of his and their leet and leets, ſhall have full power and authority within their ſeveral leets, to enquire and to take preſentment by the oath of the jurors, of all and every offence and offences in this behalf; (4) and upon ſuch preſentment had or made, to levy by diſtreſs to the uſe of the lord of the leet, all ſuch ſums of money as ſo ſhall be forfeited: (5) And moreover, that it ſhall be lawful for the lord of every ſuch leet where ſuch preſentment ſhall be made, to recover to his own uſe any ſuch forfeiture, by action of debt, in any of the queen's majeſty's courts of record, wherein no eſſoin, protection, or wager of law ſhall be allowed.

The penalty for receiving of an inmate. Coke 665.

Who may hear and determine the offences aforeſaid, and by what means. 1 Salk. 195.

Sect. 4. " And be it further enacted by the authority aforeſaid, That all juſtices of aſſizes and juſtices of peace in their open ſeſſions, and every lord within the precinct of his leet, and no others, ſhall have full power and authority within their ſeveral limits and juriſdictions, to enquire of, hear and determine all offences contrary to this preſent act, as well by indictments, as otherwiſe by preſentment or information; (2) and to award execution for the levying of the ſeveral forfeitures aforeſaid, by *Fieri facias*, *Elegit*, *Capias*, or otherwiſe, as the cauſe ſhall require.

Cottages in cities or market towns, or for workmen in mineral works, quarries, &c.

Sect. 5. " Provided always, That this ſtatute, or any thing therein contained, ſhall not in any wiſe be extended to any cottage which ſhall be ordained or erected to, or for habitation or dwelling in any city, town corporate, or ancient borough or market town within the realm; (2) nor to any cottages or buildings which ſhall be erected, ordained or converted to and for the neceſſary and convenient habitation or dwelling of any workmen or labourers in any mineral works, coal mines, quarries or delfs of ſtone or ſlate, or in or about the making of brick, tile, lime or coals within this realm; ſo as the ſame cottages or buildings be not above one mile diſtant from the place of the ſame mineral or other works, and ſhall be uſed only for the habitation and dwelling of the ſaid workmen; (3) nor ſhall in any ſort prejudice, charge or impeach any perſon or perſons for the erecting, maintaining or continuing of any ſuch cottages, as are before in this proviſo mentioned and ſpecified.

Certain cottages to which this ſtatute ſhall not extend.

Sect. 6. " Provided always, That this act ſhall not extend to any cottage to be made within a mile of the ſea, or upon the ſide of ſuch part of any navigable river where the admiral ought to have juriſdiction, ſo long as no other perſon ſhall therein inhabit, but a ſailor or man of manual occupation,

occupation, to or for making, furniſhing or victualling of any ſhip or veſſel uſed to ſerve on the ſea; (2) nor to any cottage to be made in any foreſt, chaſe, warren or park, ſo long as no other perſon ſhall therein inhabit, but an under-keeper or warrener, for the good keeping of the deer or other game or warren; (3) nor to any cottage heretofore made, ſo long as no other perſon ſhall therein inhahit, but a common herd-man or ſhepherd, for keeping the cattle or ſheep of the town, or a poor, lame, ſick, aged or impotent perſon; (4) nor to any cottage to be made, which for any juſt reſpect upon complaint to the juſtice of aſſize at the aſſizes, or to the juſtices of peace at the quarter-ſeſſions, ſhall by their order entered in open aſſizes or quarter-ſeſſions, be decreed to continue for habiration, for and during ſo long time only as by ſuch decree ſhall be tolerated and limited." *35 Eliz. cap.* 6. *43 Eliz. cap.* 2.

By ſtat. *43 Eliz. c.* 2. *ſect.* 5. The churchwardens and overſeers, by conſent of the lord of the manor, may erect cottages on the waſtes and commons, for the habitation of the poor, but for no other purpoſe.

The inconveniencies, ſays lord *Coke*, that grow by unlawful cottages, and inmates in cottages againſt this ſtatute, as appears by the preamble, are great; being neſts to hatch idleneſs, the mother of pickings, thievings, ſtealing of wood, *&c.* tending alſo to the prejudice of lawful commoners; for that new-erected cottages within the memory of man, though they have four acres of ground or more laid to them according to the act, ought not to common in the waſtes of the lord; but the greateſt inconvenience of all this is, the ill breeding and educating of youth; which inconveniencies may be eaſily helped and remedied by the proviſions of this excellent law, if lords of leets and their ſtewards would look to the execution of this act, which we hold the readieſt means; for albeit the cottage erected or converted, cannot by any proviſion in this ſtatute be demoliſhed or pulled down, yet the execution of the penalty of this act will make it uninhabitable, and work the deſired effect, and they may alſo be amerced for wrongful commoning in the court baron. 2 *Inſt.* 740.

J. S. was indicted upon the ſtatute of *31 Eliz.* becauſe he had erected a cottage five years laſt paſt, and had not allotted four acres of land according to the ſaid ſtatute *de terris menſurandis*, *33 Ed.* 1. and had continued it ever ſince. The firſt exception was, that this indictment was for erecting a cottage five years paſt; whereas every offence ought to be puniſhed within two years by indictment or information, by the expreſs word of the ſtatute of *31 Eliz. cap.* 5. otherwiſe it is not puniſhable, and therefore not good. 2dly, Becauſe he does not ſay that he voluntarily continued it; which are the expreſs words of the ſtatute. 3dly, For that it is to be by the ſtatute *De terris menſurandis*; whereas there is not any ſuch ſtatute, but it is an ordinance only; and for theſe cauſes the indictment was held ill; and the defendant was diſcharged. *Cro. J.* 603, 604. *pl.* 30. *Mich.* 18 *Jac. B. R. Stowe*'s caſe.

One was indicted for erecting of a cottage. It was moved, that the indictment was insufficient; for that the words of 31 *Eliz. cap.* 7. are, *shall willingly uphold, maintain and continue*, and the indictment is only, that he continued, and so wants the words *willingly uphold*, according to the statute. It did not appear in the indictment that it was newly erected, for it is only that he continued, and not that he erected. The indictment was quashed, because being a penal law, it was not pursued. *Godb.* 383. *pl.* 470. *Pasch.* 3 *Car. B. R. Day*'s case.

If lord of a manor will suffer poor men to erect cottages on his waste, though he takes no rent for them, yet a fine shall be set upon them, and the lord of the manor shall pay the fine; and after the cottage built, if the manor descends, or is conveyed to another, if he receives any small rent for the continuance of the cottage, he also shall pay the fine that shall be assessed, because he upholds. Agreed. *Jo.* 272, 273. 8 *Car. Christian Smith*'s case, *in Itin' Windsor.*

The statute, which gives power to erect cottages in the waste for poor people, does not extend to waste within forests. *Jo.* 269. *in Itinere Windsor*, 8 *Car.* in *Whitlock*'s case.

In *Windlesham* in the county of *Surrey*, there were divers cottages and inclosures made upon the king's soil, and afterwards the king sells the manor: *Per Noy* attorney general, This has not dispensed with the purprestures, but the patentee must be fined for the continuance of them, and they are to be pulled down, if they are not now arrented; for else the king's grant should be taken by implication to continue a wrong to his forest, which the king never intended; and accordingly they were fined and arrented. *Jo.* 277. See 6 *Vin. Abr.*

County-Court.

COUNTY court (*curia comitatus*) by *Lambard* is otherwiſe called *conventus*, in his explication of *Saxon* words, and divided into two ſorts; one retaining the general name, as *The county-court* held every month by the ſheriff, or his deputy the under-ſheriff, whereof you may read in *Cromp. Juriſd. fol.* 231. The other called *The turn*, held twice a year; of which ſee more in its proper place, and *Cromp. Juriſd. ibid.* This *county-court* had in ancient times the cognizance of great matters, as may appear by *Glanvill, lib.* 1. *cap.* 2, 3, 4. By *Bracton* and *Britton* in divers places, and by *Fleta, lib.* 2. *cap.* 62. but was abridged by the ſtatute of *Magna Charta, cap.* 17. and much more by 1 *Ed.* 4. *cap.* 1. It had alſo, and hath, the determination of certain treſpaſſes and debts under forty ſhillings. *Britton, cap.* 27, 28. What manner of proceedings was of old uſed in this court, ſee *Fleta ubi ſupra.*

Before the courts at *Weſtminſter* were erected, the *county-courts* were the chief courts of this kingdom. Amongſt the laws of king *Edgar*, this is one, *viz. Let the* hundred-court *be kept as anciently, &c. and let there be two* county-courts *in a year*; *in which* county-court *there ſhall be a biſhop, and an alderman or earl, where one ſhall judge according to the common law, and the other according to the eccleſiaſtical law.*

This is the foundation of the united power of the biſhop and earl to ſit and try cauſes in one *court*; the conjunction of which powers mutually to aſſiſt each other, is as ancient as the *Engliſh* government itſelf; but theſe powers were ſeparated by *William the Conqueror*; and ſoon after all the eccleſiaſtical buſineſs was brought into the court, ſo called, and the law buſineſs into the *King's Bench. Cowell. edit.* 1727.

Magna Charta 9 *Hen.* 3. *cap.* 35. No county ſhall be held but from month to month; and where a greater term hath been uſed, it ſhall be greater. Nor ſhall any ſheriff or his bailiff make his turn by the hundred but twice in the year, in the due and cuſtomed place, to wit, once after *Eaſter*, and once after *Michaelmas.* And the view of frankpledge ſhall then be made, ſo that every one have his franchiſes. And the view of frankpledge ſhall be made, ſo that the king's peace be kept; and the tithing kept intire.

Stat. *Marlber.* 52 *Hen.* 3. *cap.* 10. Archbiſhops, biſhops, earls, barons, or women, ſhall not need to come to the ſheriff's turn, unleſs their preſence be ſpecially required for ſome cauſe. And if any have tenements in divers hundreds, they ſhall not need to come to the turn, but in the bailiwicks where they be converſant.

Stat. *Weſt.* 1. 3 *Ed.* 1. *cap.* 33. No ſheriff ſhall ſuffer any barretor or maintainer of pleas in the counties, nor ſtewards who are not attornies of their lords, to make ſuit; and if any do it, the king will grievouſly puniſh the ſheriff and him.

Stat.

Stat. *Weſtm.* 2. 13 *Ed.* 1. *cap.* 13. The ſheriffs in their turns and elſewhere, when they have to enquire of malefactors, by the precept of the king, or of their office, ſhall make their inqueſts by lawful men, at leaſt twelve, who ſhall ſet their ſeals to their inquiſitions; and the ſheriffs ſhall take and impriſon thoſe whom by ſuch inquiſitions they ſhall find guilty, as they have uſed to do. And if they ſhall impriſon others, ſuch perſons impriſoned ſhall have their action by writ of impriſonment againſt the ſheriff, as againſt any other perſon. And ſo it ſhall be obſerved of every bailiff of liberty.

Stat. 1 *Ed.* 3. *cap.* 17. Sheriffs and bailiffs of franchiſes, and all others who take indictments in their turns or elſewhere, ſhall take ſuch indictments by roll indented, whereof one part ſhall abide with the indictors; ſo that one of the inqueſt may ſhew one part of the indenture to the juſtice, when he ſhall come to make deliverance.

Stat. 31 *Ed.* 3. *ſtat.* 1. *cap.* 15. Every ſheriff ſhall make his turn once in the month after *Eaſter*, and the other turn in the month after St. *Michael*; and if they hold them otherwiſe, they ſhall loſe their turn for the time.

Stat. 19 *Hen.* 7. *cap.* 24. The ſhire-court of *Suſſex* ſhall be holden one time at *Chicheſter*, and the next time at *Lewes*, and ſo *alternis vicibus*; and every ſhire-court holden to the contrary ſhall be void.

Stat. 2 & 3 *Ed.* 6. *cap.* 25. *ſect.* 2. The county-courts ſhall be kept every month, and no otherwiſe.

Sect. 3. The ſheriff of *Northumberland* ſhall keep the county-court in the town of *Alnwick*, and in no other place.

Thoſe county-courts which uſed to be held on the *Monday* for *York*, ſhall be held on *Wedneſday*. 7 & 8 *W.* 3. *cap.* 25. *ſ.* 9.

County-Rate.

STAT. 12 *Geo.* 2. *c.* 29. [*A. D.* 1739. *Intituled*] "An act for the more eaſy aſſeſſing, collecting and levying of county rates."

Preamble, reciting the acts, 22 H. 8. c. 5. 1 Ann. ſtat. 1. c. 18.

"Whereas by an act paſſed in the twenty-ſecond year of the reign of king *Henry* the Eighth, for repairing and amending bridges and highways: And whereas by another act paſſed in the firſt year of the reign of her late majeſty queen *Anne*, to explain and alter the ſaid act, it is, for the more eaſy taxing and collecting the money for the repair of ſuch bridges and highways thereunto adjoining (amongſt other things), enacted, That the juſtices of the peace within the ſeveral limits of their commiſſions

ſhall at their general or quarter ſeſſions of the peace have full power and authority, upon due preſentment to them made that any bridge within their reſpective commiſſions or authorities is out of repair, and which by them hath uſually, or ought to have been, repaired and maintained, to make aſſeſſments upon every town, pariſh or place, within their reſpective commiſſions for that purpoſe, in proportions upon each reſpective town and pariſh, as they uſually have been aſſeſſed towards the repair of bridges; which aſſeſſments are to be levied and collected in the manner preſcribed by the ſaid act: and whereas by an act paſſed in the eleventh and twelfth years of the reign of his late majeſty king *William* the Third, to enable juſtices of the peace to build and repair gaols in their reſpective counties, it is (amongſt other things) enacted, That it ſhall and may be lawful for the juſtices of the peace, or the greater number of them, within the limits of their commiſſions, upon preſentment of the grand jury or grand juries, at the aſſize, great ſeſſions, and general gaol-delivery, held for the ſame county, of the inſufficiency or inconveniency of their gaol or priſon, to conclude and agree upon ſuch ſum or ſums of money, as upon examination of able and ſufficient workmen ſhall be thought neceſſary for the building, finiſhing and repairing a publick gaol or gaols, belonging to the ſhire or county whereof they are juſtices of the peace; and by warrant under their hands and ſeals, or under the hands and ſeals of the greater number of them, by equal proportions to diſtribute and charge the ſum or ſums of money to be levied for the uſes aforeſaid upon the ſeveral hundreds, lathes, wapentakes, rape, ward, or other diviſion of the ſaid county, in the manner preſcribed by the ſaid act; which ſaid act was revived and continued by an act paſſed in the tenth year of the reign of her late majeſty queen *Anne*, for ſeven years and to the end of the then next ſeſſion of parliament, and made perpetual by an act of the ſixth year of the reign of his late majeſty king *George* the Firſt: and whereas by an act paſſed in the ſeventh year of the reign of king *James* the Firſt, for the due execution of divers laws and ſtatutes heretofore made againſt rogues, vagabonds and ſturdy beggars, and other lewd and idle perſons, it is (amongſt other things) enacted, That there ſhall be erected, built, or otherwiſe provided, within every county of this realm of *England* and *Wales*, where there is not one houſe of correction already built, provided or continued, one or more fit and convenient houſe or houſes of correction, by the juſtices of the peace, or the more part of them, at their reſpective quarter-ſeſſions; and that the maſters or governors of the ſaid houſes of correction ſhall have ſuch ſums of money yearly as ſhall be thought meet by the ſaid juſtices; the ſame to be paid quarterly beforehand, by the treaſurers appointed by an act made in the three and fortieth year of the late queen *Elizabeth*, intituled, *An act for the relief of the poor*; which ſaid act was to continue for ſeven years, and till the end of the next ſeſſion of parliament, and was further continued by an act paſſed in the third year of the reign of king *Charles* the Firſt, intituled, *An act for the continuance and repeal of divers ſtatutes*, unto the end of the firſt ſeſſion of the next parliament; and by an act paſſed in the ſixteenth year of the ſame

11 & 12 W. 3. c. 19.

7 Jac. 1. c. 4.

reign

reign continued in force, until repealed by ſome other act of parliament:
43 Eliz. c. 2. and whereas by an act paſſed in the forty-third year of the reign of queen *Elizabeth*, intituled, *An act for the relief of the poor*, it is (amongſt other things) enacted, That the juſtices of the peace of every county or place corporate, or the more part of them, in their general ſeſſions to be holden next after the feaſt of *Eaſter*, and ſo yearly, as often as they ſhall think meet, ſhall rate every pariſh to ſuch a weekly ſum of money as they ſhall think convenient, ſo as no pariſh be rated above the ſum of ſixpence, nor under the ſum of a halfpenny, weekly to be paid, and ſo as the total ſum of each taxation of the pariſhes in every county amount not to above the rate of two pence for each pariſh within the ſaid county; and it is thereby likewiſe enacted, That the juſtices of the peace at their general quarter-ſeſſions to be holden at the time of ſuch taxation ſhall ſet down what competent ſums of money ſhall be ſent quarterly out of every county or place corporate, for the relief of the poor priſoners of the *King's Bench* and *Marſhalſea*; and alſo of ſuch hoſpitals and alms-houſes as ſhall be in the ſaid county, and what ſums of money ſhall be ſent to every one of the ſaid hoſpitals and alms-houſes; ſo as there be ſent out of every county yearly twenty ſhillings at the leaſt to each of the ſaid priſons of the *King's Bench* and *Marſhalſea*; which ſums are rateably to be aſſeſſed upon every pariſh, and to be levied and collected as in and by the ſaid act is directed:
14 Eliz. c. 5. and whereas by an act paſſed in the fourteenth year of the reign of queen *Elizabeth*, intituled, *An act how vagabonds ſhall be puniſhed, and the poor relieved*, it is enacted, That the juſtices of the peace of every county, or the more part of them, in their general quarter-ſeſſions, ſhall rate every pariſh at ſuch reaſonable ſums of money, for the relief of priſoners, as they ſhall think convenient, ſo as no pariſh be rated above ſix pence or eight pence weekly; and the churchwardens of every pariſh ſhall levy the ſame every *Sunday*, and once in every quarter pay the ſaid ſums to the high conſtables or other head officers; and the ſaid high conſtables and head officers ſhall pay the money received of the ſaid churchwardens to ſuch perſon as ſhall be appointed by the ſaid juſtices in ſeſſions, to be by them diſtributed weekly for the relief of priſoners; ſo much of which ſaid act as relates to the taxing, levying, receiving and employing of gaol money, was revived and continued to the end of the then next ſeſſion of parliament, by an act paſſed in the firſt year of the reign of king *James* the Firſt, intituled, *An act for continuing and reviving of divers ſtatutes, and for repealing of ſome others*; and was further continued by an act paſſed in the twenty-firſt year of the reign of the ſaid king *James*, intituled, *An act for continuing and reviving of divers ſtatutes, and repeal of divers others*; and was further continued to the end of the next ſeſſion of parliament, by an act paſſed in the third year of the reign of king *Charles* the Firſt, intituled, *An act for the repeal and continuance of divers ſtatutes*; and by an act paſſed in the ſixteenth year of the ſame reign, was continued in force, until repealed by ſome other act of parliament: and whereas by an act
19 Car. 2. c. 4. paſſed in the nineteenth year of the reign of king *Charles* the Second,

intituled, *An act for relief of poor priſoners, and ſetting them on work*, it is (amongſt other things) enacted, That the juſtices of the peace at their general ſeſſions, or the major part of them, if they think fit, may provide a ſtock of materials for ſetting poor priſoners on work, in ſuch manner, and by ſuch ways as other county charges are levied and raiſed, and provide and pay fit perſons to overſee ſuch work, and make ſuch orders concerning the premiſſes, as they from time to time ſhall think fit, provided that no pariſh be rated above ſix pence by the week towards the premiſſes: And whereas an act paſſed in the twelfth year of the reign of her late majeſty queen *Anne*, for reducing the laws relating to rogues, ſturdy beggars and vagrants, into one act of parliament, and for the more effectual puniſhing ſuch rogues, vagabonds, ſturdy beggars and vagrants, and ſending them whither they ought to be ſent; it is (amongſt other things) enacted, That the juſtices of the peace at their quarter-ſeſſions may from time to time, when need ſhall be, by ſuch ways and means as monies for county gaols or bridges may be raiſed, cauſe ſuch ſums of money to be raiſed within their reſpective precincts and juriſdictions, for the paſſing and conveying or maintaining of rogues and vagabonds, as ſhall be neceſſary for thoſe purpoſes; which ſaid ſeveral rates, when collected, are to be paid, by virtue of the ſaid ſeveral acts, into the hands of treaſurers or receivers to be appointed by the juſtices at their reſpective general or quarter-ſeſſions of the peace, and to be accounted for, as in and by the ſaid ſeveral acts are recited: And whereas it is apparent that the manner and methods preſcribed by the ſaid ſeveral reſpective acts for collecting ſome of the ſaid rates are impracticable, the ſums charged on each pariſh in the reſpective diviſions being ſo ſmall, that they do not by an equal pound-rate amount to more than a fractional part of a farthing in the pound on the ſeveral perſons thereby rateable; and if poſſible to have been rated, the expence of aſſeſſing and collecting the ſame would have amounted to more than the ſum rated: And whereas many and great doubts, difficulties and inconveniencies have ariſen in making and collecting other of the ſaid rates: Therefore that the good ends and purpoſes of the ſaid ſeveral ſtatutes may be anſwered, and the ſeveral ſums of money thereby intended to be raiſed may effectually be collected, with as much eaſe and certainty, and as little expence as can be to the parties obliged by the ſaid laws to pay the ſame; Be it therefore enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the firſt day of *September* one thouſand ſeven hundred and thirty-nine, the juſtices of peace in that part of *Great Britain* called *England*, within the reſpective limits of their commiſſions, at their general or quarter-ſeſſions, or the greater part of them then and there aſſembled, ſhall have full power and authority, from time to time, to make one general rate or aſſeſſment for ſuch ſum or ſums of money as they in their diſcretions ſhall think ſufficient to anſwer all and every the ends and purpoſes of the before-recited acts, inſtead and in lieu of the ſeveral ſeparate and diſtinct rates directed thereby

12 Annæ, ſtat. 2. c. 23.

After 1 Sept. 1739, juſtices to make from time to time one general aſſeſſment, inſtead of the ſeveral rates appointed by ſeveral acts;

to be made, levied and collected; which rate ſhall be aſſeſſed upon every town, pariſh or place within the reſpective limits of their commiſſions, in ſuch proportions as any of the rates heretofore made in purſuance of the ſaid ſeveral acts have been uſually aſſeſſed; and the ſeveral and reſpective ſums ſo aſſeſſed upon each and every town, pariſh or place within the reſpective limits of their commiſſions, ſhall be collected by the high conſtables of the reſpective hundreds and diviſions, in which any town, pariſh or place doth lie, in ſuch manner, and at ſuch times as is herein after directed.

Sect. 2. "And that the reſpective ſum or ſums ſo to be aſſeſſed and collected may be well and truly paid to the reſpective high conſtables, Be it further enacted by the authority aforeſaid, That the churchwardens and overſeers of the poor for the time being of each and every pariſh and place within the reſpective counties, cities and liberties, in which they reſpectively lie, ſhall and they are hereby required, out of the money collected or to be collected for the relief of the poor of ſuch pariſh or place, to pay to the high conſtables of the reſpective hundreds or diviſions of the ſaid counties, cities and liberties, the reſpective ſum or ſums of money ſo rated and aſſeſſed upon ſuch pariſh or place, within the ſpace of thirty days after demand thereof made in writing, to be given to the ſaid churchwardens or overſees of the poor, or any of them, or left at their or either of their dwelling-houſe or houſes, or affixed on any of the church doors of ſuch pariſh or place to which ſuch officer ſhall belong, by the ſaid high conſtable or high conſtables of the reſpective hundreds or diviſions; which demand the reſpective high conſtable or high conſtables is and are hereby required to make, at ſuch times as the ſaid juſtices of the peace, or the greater part of them, ſhall by their order in ſeſſions direct; and the receipt or receipts of ſuch high conſtable or high conſtables ſhall be a full and ſufficient diſcharge to ſuch churchwardens and overſeers of the poor, or other perſon paying the ſame, and ſhall be allowed in their accounts as ſuch by the juſtices of the peace before whom ſuch accounts ſhall be paſſed: And in caſe ſuch churchwardens and overſeers of the poor, or any of them, ſhall neglect or refuſe to pay any the ſum or ſums of money hereby aſſeſſed, after demand made as aforeſaid; ſuch high conſtable or high conſtables ſhall, and they are hereby impowered to levy the ſame by diſtreſs and ſale of the goods and chattels of ſuch churchwardens and overſeers, or either of them ſo refuſing or neglecting to pay the ſame as aforeſaid, by warrant under the hands and ſeals of two or more juſtices of the peace of the county, riding, diviſion, city, town corporate, liberty or place, reſiding in or near ſuch pariſh or place; rendering the overplus, if any there ſhall be, after deducting the money aſſeſſed, and the charges of the diſtreſs and ſale, to the owner or owners thereof.

to be paid out of the poor's rate of every pariſh to the high conſtable,

or to be levied on them by diſtreſs.

Where there is no poor's rate, the petty conſtable of the place to levy and pay the county rate.

Sect. 3. "Provided nevertheleſs, and be it enacted by the authority aforeſaid, That in caſe no rate is or ſhall be made for the relief of the poor in any pariſh, townſhip or place; the juſtices of the peace in their reſpective general or quarter-ſeſſions, or the greater part of them then

and there aſſembled, ſhall and may by their order direct the ſum of money aſſeſſed on ſuch pariſh, townſhip or place, for the purpoſes of this act, to be rated and levied on ſuch pariſh, townſhip or place, by any petty conſtables or other peace officer of or belonging to the ſame, in ſuch manner as money for the relief of the poor is by law to be rated or levied; which ſum ſo rated and levied ſhall be paid by ſuch petty conſtable or other peace officer to the reſpective high conſtable for the hundred, diviſion or liberty wherein ſuch pariſh, townſhip or place ſhall lie; and ſhall be demanded of, paid by, or levied on ſuch petty conſtable or other peace officer, in the ſame manner as any rates are herein before directed to be demanded of, paid by and levied on the churchwardens and overſeers of the poor, or any of them; and if ſuch petty conſtable or other peace officer ſhall pay ſuch ſum, before the ſame ſhall be ſo by him rated and levied as aforeſaid, he may afterwards rate and levy the ſame, or ſhall and may be allowed and reimburſed the ſaid ſum of money out of any conſtable's, or other rate made or to be made on any ſuch pariſh, townſhip or place, which the ſaid juſtices of the peace, or the greater part of them, in their ſeſſions ſhall order and direct.

Sect. 4. "And whereas it will be very inconvenient to many towns, pariſhes and places in the ſeveral counties of *York*, *Derby*, *Durham*, *Lancaſter*, *Cheſter*, *Weſtmorland*, *Cumberland* and *Northumberland*, that the rates by this act directed to be paid by and levied on the churchwardens and overſeers of the poor for the purpoſes aforeſaid, ſhould be paid out of any rate to be made for the relief of the poor in ſuch towns, pariſhes and places; Be it therefore enacted by the authority aforeſaid, That it ſhall and may be lawful to and for the juſtices of the peace for the reſpective ridings, diviſions or counties of *York*, *Derby*, *Durham*, *Lancaſter*, *Cheſter*, *Weſtmorland*, *Cumberland* and *Northumberland*, at their reſpective general or quarter-ſeſſions, or the greater part of them then and there aſſembled, if they ſhall think convenient, to order the ſum of money directed to be aſſeſſed on any ſuch town, pariſh or place, for all or any of the purpoſes of this act, to be paid by and levied on the petty conſtable of or for any ſuch town, pariſh or place within the ſaid counties reſpectively, in ſuch manner as the ſame is herein directed to be paid and levied, in caſes where no rate is made for the relief of the poor; any thing herein contained, or any law, uſage or cuſtom to the contrary notwithſtanding.

Counties excepted from paying the rate of this act out of the poor's rate.

Sect. 5. "Provided always, and be it enacted by the authority aforeſaid, That this act, or any thing herein contained, ſhall not extend or be conſtrued to extend to make any perſons, liberties, diviſions, or places liable to pay to any rate to be made in purſuance of this act, to which ſuch perſon, liberty, diviſion or place did not, or was not liable to contribute before the paſſing hereof; but that it ſhall and may be lawful to and for the juſtices of the peace at their reſpective general or quarter-ſeſſions, or the greater part of them then and there aſſembled, to order and aſcertain what proportion of any rate to be made by virtue of this act ſhall be aſſeſſed on and paid by the ſeveral perſons, liberties, diviſions, and places, who have uſually

Proviſo, in favour of places heretofore not paying all, or any county rates.

contributed, or are liable to pay only to one or more of, and not to all the rates hereby intended to be raiſed, and thrown into one general rate or aſſeſſment.

High conſtables to pay the monies to the treaſurers appointed by the quarter-ſeſſions,

Sect. 6. "And be it further enacted by the authority aforeſaid, That the reſpective high conſtables ſhall, and they are hereby required, at or before the next general or quarter-ſeſſions reſpectively after they or any of them ſhall have received ſuch ſum or ſums of money, to pay the ſame into the hands of ſuch perſon or perſons (being reſident in any ſuch county, riding, diviſion, city, liberty or place where ſuch rates ſhall be reſpectively made) whom the ſaid juſtices ſhall at their reſpective general or quarter-ſeſſions, or the greater part of them then and there aſſembled, appoint to be the treaſurer or treaſurers (which treaſurer or treaſurers they are hereby authorized and impowered to nominate and appoint); ſuch treaſurer or treaſurers firſt giving ſufficient ſecurity in ſuch ſums as ſhall be approved of by the ſaid juſtices at their reſpective general or quarter-ſeſſions, or the greater part of them then and there aſſembled, to be accountable for the ſeveral and reſpective ſums of money which ſhall be reſpectively paid to them in purſuance of this act, and to pay ſuch ſum or ſums of money as ſhall be ordered to be paid by the juſtices in their general or quarter-ſeſſions, and for the due and faithful execution of the truſts repoſed in him or them; and all and every ſuch ſum or ſums of money as ſhall be paid into his or their hands by virtue of and in purſuance of this act, ſhall be deemed and taken to be the publick ſtock; and the ſaid treaſurer or treaſurers ſhall and are hereby required to pay ſo much of the money in their hands, to ſuch perſon and perſons as the ſaid juſtices at their reſpective general or quarter-ſeſſions, or the greater part of them then and there aſſembled, ſhall by their orders from time to time direct and appoint for the uſes and purpoſes of the ſaid recited acts, and for any other uſes and purpoſes to which the publick ſtock of any county, city, riding, diviſion or liberty, is or ſhall be applicable by law."

and they to whomſoever the juſtices ſhall direct.

Treaſurers to keep books of entries,

and to account upon oath.

Sect. 7. "And be it further enacted by the authority aforeſaid, That the ſaid reſpective treaſurer or treaſurers ſhall and are hereby required to keep books of entries of the ſeveral ſums reſpectively received and paid by him or them in purſuance of this act; and is and are alſo hereby required to deliver in true and exact accounts upon oath if required (which oath the ſaid juſtices at their reſpective general or quarter-ſeſſions are hereby impowered to adminiſter) of all and every the ſum and ſums of money reſpectively received and paid by him or them, diſtinguiſhing the particular uſes to which ſuch ſum or ſums of money have been applied, to the juſtices at every general or quarter-ſeſſions reſpectively to be holden within the limits of their commiſſions; and ſhall lay before the juſtices at ſuch ſeſſions the proper vouchers for the ſame."

High conſtable's charge.

Sect. 8. "And be it further enacted by the authority aforeſaid, That the reſpective high conſtables ſhall and they are hereby required to demand and levy ſuch rates and aſſeſſments in manner before directed, and ſhall account for the ſame before the ſaid juſtices at their reſpective general or quarter-ſeſſions, if thereunto required, in the like manner as the ſaid treaſurer or treaſurers

ſurers is and are hereby directed to account; and in caſe ſuch high conſtables, or any of them, ſhall neglect or refuſe ſo to demand, levy, or account, then it ſhall and may be lawful to and for the ſaid juſtices, at their reſpective general or quarter-ſeſſions or the greater part of them then and there aſſembled, to commit ſuch high conſtable or high conſtables to the common gaol of the county, riding, diviſion, city, town corporate, liberty or place, there to remain without bail or mainprize, until he or they ſhall have cauſed ſuch rates or aſſeſſments to be demanded and levied; and ſhall have rendered a true account or accounts in the manner hereby directed; and in caſe it ſhall appear by ſuch account or accounts, that any ſum or ſums of money is or are remaining in his or their hands, which he or they ſhall have received of the reſpective churchwardens and overſeers, or other perſons, which ought to have been paid to the reſpective treaſurer or treaſurers at the time or times limited by this act, or of the reſpective treaſurer or treaſurers, in order to be applied to the purpoſes aforeſaid; and if he or they ſhall neglect or refuſe to pay the ſame over into the hands of the reſpective treaſurer or treaſurers, or otherwiſe, if thereunto required by order of the ſaid juſtices at their reſpective general or quarter-ſeſſions, or the greater part of them then and there aſſembled; then it ſhall and may be lawful for the ſaid juſtices at ſuch their general or quarter-ſeſſions, or the greater part of them then and there aſſembled, to commit ſuch high conſtable or high conſtables to the common gaol of the county, riding, diviſion, city, town corporate, liberty or place, there to remain without bail or mainprize, until he or they ſhall have made full payment of the ſum or ſums of money, that ſhall appear to be due on ſuch account or accounts; and all the accounts and vouchers of the ſaid treaſurers and high conſtables ſhall, after having been paſſed by the ſaid juſtices at their reſpective general or quarter-ſeſſions, be depoſited with the clerk of the peace for the time being, of each county reſpectively, or the town-clerk, high bailiff, or chief officer of any city, town corporate or liberty, who is and are hereby required to keep them among the records of ſuch county, city, town corporate or liberty, to be inſpected from time to time by any of the ſaid juſtices, within the limits of their commiſſions, as occaſion ſhall require, without fee or reward."

Penalty on default.

Their and the treaſurers vouchers to be kept among the records of the county, &c.

Sect. 9. "And be it further enacted by the authority aforeſaid, That the receipts of ſuch reſpective treaſurer or treaſurers ſhall be ſufficient diſcharges to all high conſtables; and the diſcharges of the ſaid juſtices of the peace, or the greater part of them, by their orders made at their reſpective general or quarter-ſeſſions to ſuch treaſurer or treaſurers, ſhall be deemed and allowed as good and ſufficient releaſes, acquittances, or diſcharges, in any court of law or equity, to all intents and purpoſes whatſoever."

What ſhall be their reſpective diſchage.

Sect. 10. "And be it further enacted by the authority aforeſaid, That no new rate ſhall be made until it ſhall appear to the ſaid juſtices at their reſpective general or quarter-ſeſſions, or the greater part of them then and there aſſembled by the accounts of their reſpective treaſurer or treaſurers or otherwiſe, that three fourths of the money, collected by virtue of the preceding rate have been expended for the uſes and purpoſes aforeſaid."

The condition on which new rates are to be made.

Sect.

Treaſurer to be continued or removed at the will of the quarter-ſeſſions.

Sect. 11. "And be it further enacted by the authority aforeſaid, That it ſhall and may be lawful to and for the ſaid juſtices of the peace at their reſpective general or quarter-ſeſſions, or the greater part of them then and there aſſembled, to continue from time to time ſuch treaſurer or treaſurers in his or their office or offices, ſo long as they ſhall ſee convenient, and to remove him or them at their pleaſure, and appoint any other perſon or perſons in his or their place; and to allow to him or them and every of them, inſiſting on the ſame, ſuch reaſonable ſum or ſums of money for his or their care and pains in the execution of ſuch truſt, not exceeding twenty pounds by the year, as they in their diſcretion ſhall think fit; which they are hereby impowered to direct the payment of, out of the monies ariſing by the reſpective rates hereby appointed to be made."

Pariſhes over-rated, to appeal to the ſaid ſeſſions.

Sect. 12. "And be it further enacted by the authority aforeſaid, That in caſe the church-wardens and overſeers of any pariſh or place ſhall at any time have reaſon to believe the ſaid pariſh or place is over-rated, ſuch church-wardens and overſeers may appeal to the reſpective juſtices of the peace at their next general or quarter-ſeſſions, againſt ſuch part of the rate only as may affect the pariſhes or places in which they ſerve ſuch offices; which juſtices, or the greater part of them then and there aſſembled, are hereby authorized and impowered to hear and finally determine the ſame: provided nevertheleſs, that upon ſuch appeal ſuch rate ſhall not be quaſhed or deſtroyed in regard to any other pariſhes or places aſſeſſed thereby.

Juſtices to make but one rate for Middleſex.

Sect. 15. "And it is hereby further enacted, That there ſhall be but one rate made and aſſeſſed by the juſtices of the peace of the county of *Middleſex*, in the ſaid county, city and liberty of *Weſtminſter*, for the ſeveral purpoſes aforeſaid, and for the repair of the gaol commonly called *New Priſon*, in the ſaid county of *Middleſex*.

Proviſo as to the houſe of correction at Weſtminſter.

Sect. 16. "Provided nevertheleſs, That the juſtices of the peace for the city and liberty of *Weſtminſter*, at their general or quarter-ſeſſions to be holden for the ſame city or liberty, or the greater part of them then and there aſſembled, ſhall have full power to appoint the governor or maſter of the houſe of correction within the ſaid city or liberty; who ſhall have ſuch ſum of money yearly as hath been accuſtomed for and towards the ſupport and maintenance of the priſoners in his cuſtody, who ſhall be ſick, or unable to work, (not exceeding the preſent allowance of fifty pounds by the year) and direct the repairs and management thereof as they heretofore have done; and the treaſurer or treaſurers of the money ariſing by the rates in the ſaid county of *Middleſex* and city and liberty of *Weſtminſter*, hereby appointed to be collected, ſhall and is and are hereby required to obey all orders which ſhall from time to time be made by the ſaid juſtices of the ſaid city and liberty, or the greater part of them then and there aſſembled, at their general or quarter-ſeſſions, for the payment of any ſum or ſums of money for the allowance allotted to ſuch governor or maſter of the houſe of correction, and the repairs thereof; which orders ſhall be good and ſufficient diſcharges to ſuch treaſurer or treaſurers; any thing herein contained to the contrary thereof in any wiſe notwithſtanding.

Sect.

Sect. 17. " And be it further enacted by the authority aforeſaid, That the juſtices of the peace at their reſpective general or quarter-ſeſſions, or the greater part of them then and there aſſembled, ſhall be and are hereby impowered to oblige, by their order or orders, the reſpective high conſtables and petty conſtables, or any other perſon or perſons who are or have been impowered to levy, collect or receive any ſum or ſums of money by virtue of and for the purpoſes aforeſaid, and who have any ſum or ſums of money in their hands, to account with them at their general or quarter-ſeſſions, in ſuch manner as high conſtables are directed to account by virtue of this act; and in caſe ſuch high conſtables or petty conſtables, or other perſon or perſons, ſhall refuſe to account or to pay over the money that ſhall remain in their or any of their hands, when thereunto required by order of the ſaid juſtices or the greater part of them in their reſpective general or quarter-ſeſſions aſſembled; in either of the ſaid caſes the ſaid juſtices ſhall have the like remedy againſt them or any of them, as they have againſt the high conſtables by virtue of this act, for not accounting for or paying over the money remaining in their hands: and it ſhall and may be lawful to and for the ſaid juſtices at their reſpective general or quarter-ſeſſions, or the greater part of them then and there aſſembled, and they are hereby impowered to direct and order the payment of the reſpective ſums of money which ſhall appear to be remaining due, and not applied or diſpoſed of, into the hands of the reſpective treaſurer or treaſurers to be appointed by this act; which ſhall be deemed to be part of the ſtock of the ſaid counties, cities, ridings, diviſions, liberties or places reſpectively; and to enquire what ſums of money are due and owing for the purpoſes aforeſaid; and then to order the payment of ſuch ſums as ſhall appear to them upon ſuch enquiry to be juſtly due and owing.

Juſtices impowered to oblige collectors to account with them,

and to order the monies unapplied to be paid to the treaſurer.

Sect. 18. " And be it further enacted by the authority aforeſaid, That no action or ſuit ſhall be commenced or proſecuted againſt any perſon or perſons, who has or have been or ſhall be employed in the collecting or receiving any money in purſuance of the ſaid recited acts, or this preſent act, on any rate or rates which has or have been or ſhall be quaſhed or diſcharged on any *certiorari* brought or to be brought in any of his majeſty's courts of record at *Weſtminſter*, or otherwiſe, for any money collected or received, or to be collected or received on any ſuch rate or rates, before ſuch writ of *Certiorari* was or ſhall be brought and allowed; and that juſtice may be done to ſuch perſons who ſhall or may pay towards any rate which ſhall be quaſhed or diſcharged, the ſeveral ſums of money which ſhall appear to have been paid by them on ſuch rate, either in whole or in part, more than they ought to have paid, ſhall be repaid or allowed to them in the next rate or rates which ſhall be made in purſuance of this act, as if the ſame had been paid on ſuch new rate or rates; any thing in any former act, or any law, uſage or cuſtom to the contrary thereof in any wiſe notwithſtanding.

No action againſt perſons collecting on rate diſcharged by Certiorari, &c.

but the perſons over rated to be relieved.

.

Sect.

Such collectors obliged to payment.

Sect. 19. " Provided nevertheleſs, and it is hereby further enacted, That all and every ſuch perſon and perſons ſo employed or to be employed, ſhall account for and pay over the money by them reſpectively received, in the ſame manner, and under the like penalties for any neglect or refuſal therein, as are to be inflicted by virtue of this act on any perſon or perſons neglecting or refuſing to account for or pay over any money remaining in his or their hands, which he or they have received in purſuance hereof; any thing in any of the ſaid recited acts contained to the contrary thereof in any wiſe notwithſtanding.

Juſtices of Middleſex to have the ſame power at their general as at their quarter-ſeſſions.

Sect. 20. " And be it further enacted by the authority aforeſaid, That the juſtices of the peace for the ſaid county of *Middleſex* at their general ſeſſions of the peace to be holden for the ſaid county ſhall have the ſame powers and authorities to put this act in execution, as are hereby given them at their general quarter-ſeſſions; any thing in this, or any former act, or any law, uſage or cuſtom to the contrary notwithſtanding.

Writ of Certiorari on what terms iſſuable.

Sect. 21. " And be it further enacted by the authority aforeſaid, That no writ of *Certiorari*, to remove any rates made in purſuance of this act, or to remove any orders or other proceedings taken or made by the ſaid reſpective general or quarter-ſeſſions touching ſuch rates, ſhall be taken out or granted, but upon a motion to be made ſome time in the firſt week of the next term after the time for appealing from ſuch rates or orders is expired; and upon making it appear to the court by affidavit or otherwiſe, that the merits of the queſtion upon ſuch appeal or orders will by ſuch removal come properly in the judgment of the ſaid court; and that no ſuch writ of *Certiorari* ſhall be allowed until ſufficient ſecurity be given to the reſpective treaſurer or treaſurers appointed by virtue of this act, in the ſum of one hundred pounds, to proſecute ſuch writ of *Certiorari* with effect, and to pay the coſts to be aſcertained by the court to which ſuch rates, orders, or proceedings ſhall be removed, in caſe ſuch rates or orders ſhall be confirmed; nor ſhall any ſuch rates, orders or proceedings be quaſhed or vacated for want of form only; and all charges attending ſuch removal ſhall be defrayed out of that or any ſubſequent rate.

Part of the acts 14 & 43 Eliz. and 19 Car. 2. repealed.

Sect. 22. " And be it further enacted by the authority aforeſaid, That ſo much of the before recited act paſſed in the fourteenth year of the reign of queen *Elizabeth*, as relates to the method of taxing pariſhes for the relief of priſoners; and ſo much of the ſaid act of the forty-third year of the ſame reign as relates to the method of raiſing money for the *King's Bench* and *Marſhalſea* priſons, hoſpital and alms-houſes; and ſo much of the ſaid act of the nineteenth year of the reign of king *Charles* the Second, as relates to the method of rating pariſhes for providing materials for the ſetting poor priſoners on work, ſhall be repealed, and be abſolutely null and void.

Manner of the payment of the King's Bench and Marſhalſea money. 11 Geo. 2. c. 19

Sect. 23. " Provided nevertheleſs, That ſuch ſums as have been annually paid to the *King's Bench* and *Marſhalſea* priſons, ſhall be paid out of the monies ariſing by virtue of this act, at ſuch times, and in ſuch manner, as is preſcribed in and by an act paſſed in the eleventh year of the reign

of the reign of his preſent majeſty, intituled, *An act for the more effectual ſecuring the payments of certain ſums of money, directed by an act made in the forty-third year of the reign of queen* Elizabeth, *intituled*, An act for the relief of the poor, *to be paid by the reſpective treaſurers of every county of* England *and* Wales, *for the relief of the poor priſoners of the* King's Bench *and* Marſhalſea *priſons*; and ſuch money as ſhall be judged neceſſary by the juſtices of the peace in ſeſſions to be applied in purſuance of the ſaid act of the fourteenth year of the reign of queen *Elizabeth*, for the relief of priſoners; and of the ſaid act of the nineteenth year of the reign of king *Charles* the Second, for providing materials for the ſetting poor priſoners on work, ſhall be paid out of the monies ariſing by this act.

Sect. 24. "And be it further enacted by the authority aforeſaid, That if any action or ſuit ſhall be commenced againſt any perſon or perſons for any thing that ſhall be done in purſuance or by the authority of this preſent act, in every ſuch caſe the action or ſuit ſhall be commenced within three months next after the fact committed, and not afterwards, and ſhall be laid and brought in the reſpective county in which the cauſe of action or ſuit ſhall ariſe, and not elſewhere; and the defendant or defendants in ſuch action or ſuit to be brought ſhall and may plead the general iſſue, and give this act and the ſpecial matter in evidence at any trial to be had thereupon; and that the ſame was done in purſuance and by the authority of this act; and if it ſhall appear ſo to be done, or that ſuch action or actions ſhall be brought after the time before limited for bringing the ſame as aforeſaid, or ſhall be brought in any other county or place; that then the jury ſhall find for the defendant or defendants; and upon ſuch verdict, or if the plaintiff or plaintiffs ſhall be nonſuited, or diſcontinue his, her or their actions or ſuit, after the defendant or defendants hath or have appeared; or if upon demurrer judgment ſhall be given againſt the plaintiff or plaintiffs, the defendant or defendants ſhall and may recover treble coſts, and have the like remedy for the ſame, as any defendant or defendants hath or have in other caſes by law." Limitation of action. General iſſue. Treble coſts.

Stat. 13 *Geo.* 2. *c.* 18. [*A. D.* 1740.] *made, among other purpoſes*, "for extending the powers and authorities of juſtices of the peace of counties touching county-rates, to the juſtices of the peace of ſuch liberties and franchiſes as have commiſſions of the peace within themſelves."

Sect. 7. "And whereas by an act paſſed in the twelfth year of his preſent majeſty's reign, intituled, *An act for the more eaſy aſſeſſing, collecting and levying of county-rates*, ſeveral powers and authorities are given to the juſtices of the peace in that part of *Great Britain* called *England*, within the reſpective limits of their commiſſions, at their general or quarter-ſeſſions, from time to time to make one general rate or aſſeſſment for ſuch ſum or ſums of money, as they in their diſcretion ſhall think ſufficient to anſwer all and every the ends and purpoſes of the ſeveral acts therein recited; but there being a proviſo in the ſaid act, that the ſame, or any thing therein contained, ſhould not extend, or be conſtrued to extend, to make 12 Geo. 2. c. 29.

make any perſons, liberties, diviſions or places liable to pay to any rate to be made in purſuance of the ſaid act, to which ſuch perſon, liberty, diviſion or place did not, or was not liable to contribute before the paſſing thereof; ſome doubts have ariſen whether the ſaid act doth extend to liberties and franchiſes, which are not within the juriſdiction of the commiſſions of the peace for the counties in which ſuch liberties and franchiſes lie, and ſo never did nor were liable to contribute to the ſaid county-rates; To the end therefore that ſuch liberties and franchiſes may not be wholly deprived of the benefit of the ſaid in part recited act, it is hereby declared and enacted by the authority aforeſaid, That where any liberties or franchiſes within that part of *Great Britain* called *England*, have commiſſions of the peace within themſelves, and are not ſubject to the juriſdiction of the commiſſions of the peace for the counties in which ſuch liberties or franchiſes lie, and do not, nor did, before the making the ſaid in part recited act, contribute or pay to the ſeveral rates made for the ſaid counties; it ſhall and may be lawful to and for the juſtices of the peace of ſuch liberties and franchiſes, within the reſpective limits of their commiſſions, to have, uſe and exerciſe all and ſingular the powers, authorities and methods given or preſcribed by the ſaid in part recited act, and all ſuch liberties and franchiſes are hereby declared to be ſubject thereto, in the ſame manner to all intents and purpoſes, as counties at large are; any thing in the ſaid in part recited act contained, or any law, uſage or cuſtom to the contrary thereof in any wiſe notwithſtanding."

Juſtices of peace for liberties to act with the ſame power as juſtices for the county, in collecting county-rates.

Demurrer.

A *Demurrer* is when the criminal joins iſſue upon a point of law in an indictment, allowing the fact to be true, as laid in the indictment, or appeal. If the indictment, or appeal, proves to be good in law, in the opinion of the judges, they proceed to judgment and execution, as if the party had been convicted by confeſſion or verdict. For he ſhall not be put under the *Pain fort & dure*, though by his demurrer he refuſes to put himſelf upon the inqueſt according to the letter; yet he is out of the reaſon of the law, becauſe a demurrer is allowed to be tried by the judges, and not by the inqueſt. *Wood's Inſt. b.* 4. *c.* 5. cites *S. P. C.* 150. 2 *Inſt.* 178. *H. P. C.* 243.

In criminal caſes not capital, if the defendant demur to an indictment, the court will not give judgment againſt him to anſwer over, but final judgment. 2 *Hawk.* 334.

But

But regularly, in all caſes of felony, where a man pleads a ſpecial matter, though he conclude his plea with Not guilty to the felony, or do not conclude it ſo; yet if his plea be tried, or found, or ruled againſt him, he ſhall be put to his plea of Not guilty, and be tried for the felony; for though a man ſhall loſe his land in ſome caſes, for miſpleading, yet he ſhall not loſe his life for miſpleading. 2 *H. H.* 257.

Deodand.

DEODAND, *(deodandum)* is a thing given, or rather forfeited, as it were, to God, for the pacification of his wrath, in caſe of miſadventure, whereby any Chriſtian man cometh to a violent end, without the fault of any reaſonable creature. For example; If a horſe ſhould ſtrike his keeper, and ſo kill him: If a man in driving a cart, and ſeeking to redreſs any thing about it, ſhould ſo fall as the cart-wheel running over him, ſhould kill him: If one ſhould be felling a tree, and he give warning to the company preſent, when the tree was near falling, to look to themſelves, and any of them ſhould be ſlain nevertheleſs by the fall of the tree: In the firſt of theſe caſes, the horſe; in the ſecond, the cart-wheel, cart and horſes; and in the third, the tree, is a *deodand*, and to be given to God; that is, to be ſold and diſtributed to the poor, by the king's almoner, for an expiation of that dreadful event, though effected by unreaſonable, yea ſenſeleſs and inanimate creatures. *Staundf. pl. cor. lib.* 1. *cap.* 2. *Bract. lib.* 3. *tract.* 2. *cap.* 5. *Britton, cap.* 17. and *Weſtm. Symbol.* tit. *Indictments, ſect.* 49.

Fleta ſays, this *deodand* is to be ſold, and the price diſtributed to the poor, for the ſoul of the king, his anceſtors, and all faithful people departed this life. *Lib.* 1. *cap.* 25. *De ſubmerſis*; which law ſeems to bear an imitation of that in *Exodus, cap.* 21. *Si cornu petierit bos virum vel mulierem, ita ut moriatur, lapidabitur bos, neque comedetur caro ejus, ac Dominus ejus erit innocens.* This word is mentioned in the ſtat. *De officio coronatoris, anno* 4 *Ed.* 1. See 3 *part. Inſt. fol.* 57. Since therefore by the *Moſaical* law the ox was to be ſtoned to death, it ſeems reaſonable that the price of the ox ſhould be beſtowed in pious and charitable uſes. *Cowell, edit.* 1727.

A deodand is that inſtrument which occaſions the death of a man, and is forfeited to the king, in order to be diſpoſed in pious uſes by the king's almoner; this forfeiture of whatever procures the death of a man without the default of another was introduced to increaſe the terror and abhorrence of murder, ſo that nothing that occaſioned it ſhould ſeem to go unpuniſh-

ed; alſo that weapon or inſtrument, whereby one man kills another, is called a deodand. *3 Inſt.* 57, 58. *5 Co.* 110. *H. P. C.* 34. *Pult.* 125. *Crom.* 31. *a.*

To underſtand what things are forfeited as deodands, we muſt obſerve that it is laid down as a rule, that *omnia quæ movent ad mortem ſunt deodanda*; and therefore that wherever the thing which is the occaſion of a man's death is in motion at the time, not only that part thereof which immediately wounds him, but all things which move together with it, and help to make the wound more dangerous, are forfeited alſo. *1 Hawk. P. C.* 66, 67.

As where a cart meeting a waggon loaded upon the road, and the cart endeavouring to paſs by the waggon, was driven upon a high bank, and overturned, and threw the perſon that was in the cart juſt before the wheels of the waggon, and the waggon run over the man and killed him, it was held that the cart, waggon, loading, and all the horſes were deodands, becauſe they all moved *ad mortem.* *1 Salk.* 220.

But if a man, riding on the ſhafts of a waggon, fall to the ground, and break his neck, the horſes and waggon only are forfeited, but not the loading, becauſe it no way contributed to his death. *3 Inſt.* 58. *S. P. C.* 20. *1 Hawk. P. C.* 66.

So where a thing not in motion cauſes a man's death, that part thereof only which is the immediate cauſe is forfeited; as where one climbing upon the wheel of a cart while it ſtands ſtill falls from it, and dies of the fall, the wheel only is forfeited; but if he had been killed by a bruiſe from one of the wheels being in motion, the loading alſo would have been forfeited, becauſe the weight thereof made the hurt the greater. *1 Hawk. P. C.* 66.

Alſo if a man riding on a horſe over a river is drowned through the violence of the ſtream, the horſe is not forfeited; becauſe not that, but the water, cauſed his death. *Cro. Jac.* 483. *2 Rol. Rep.* 23. *Poph.* 156. It is otherwiſe if the horſe had thrown him. *1 Salk.* 220.

By the opinion of our authors, things fixed to a freehold, as the wheel of a mill, a bell hanging in a ſteeple, *&c.* may be deodands; but by the later reſolutions they cannot, unleſs they were ſevered before the accident happened. *1 Hawk. P. C.* 66.

Alſo it was formerly held, that this forfeiture did not extend to caſual deaths ariſing from the indiſcretion of children or infants within the age of diſcretion, for that ſuch puniſhment of innocent owners by taking their goods would anſwer no good end of juſtice: beſides, the misfortune in this caſe might ſeem rather owing to the indiſcretion of the infant than any default in the thing; but this diſtinction has not been allowed of late; for the law does not ground the forfeiture on any default in the things forfeited, ſince it extends to things without life, to which it is plain that no manner of fault can be imputed. *1 Hawk. P. C.* 66.

The forfeiture takes place at land only, and doth not extend to the ſeas, that are continually liable to ſtorms and tempeſts; and therefore a

ſhip

ſhip in ſalt water, whether in the open ſea, or within the body of a county, from which a man falls and is drowned, is not forfeited.

But a ſhip, by a fall from which a man is drowned in the freſh water, ſhall be forfeited; but not the merchandize therein, becauſe they no way contributed to his death. 1 *Hawk. P. C. 66.*

In all theſe caſes, if the party wounded die not of his wounds, within a year and a day after he received it, there ſhall be nothing forfeited; for the law does not look on ſuch as the cauſe of a man's death, after which he lives ſo long; but if the party die within that time, the forfeiture ſhall have relation to the wound given, and cannot be ſaved by alienation, or other act whatſoever in the mean time. 1 *Hawk. P. C. 67.*

However, nothing can be forfeited as a deodand, nor ſeized as ſuch, till it be found by the coroner's inqueſt to have cauſed a man's death; but after ſuch inquiſition the ſheriff is anſwerable for the value of it, and may levy the ſame on the town where it fell; and therefore the inqueſt ought to find the value. 1 *Hawk. P. C. 67.*

I have nothing to add, ſays Mr. Juſtice *Foſter*, to what other writers have ſaid touching deodands, more than to obſerve, that as this forfeiture ſeemeth to have been originally founded rather in the ſuperſtition of an age of extreme ignorance than in the principles of ſound reaſon and true policy, it hath not of late years met with great countenance in *Weſtminſter-hall*. And where judges have taken upon them to uſe a judgment of diſcretion, not ſtrictly within their province, for reducing the *quantum* of the forfeiture, (I wiſh the temptation to it was taken out of their way) the court of *King's Bench* hath refuſed to interpoſe in favour of the crown or lord of the franchiſe. It hath frequently interpoſed its authority as ſovereign coroner in this caſe, and alſo in the caſe of ſuicide, *in favour of the ſubject, and to ſave the forfeiture*, but will not do it in either caſe *to his prejudice*. And herein it proceedeth upon the ſame principle of equitable juſtice, that the courts of *Weſtminſter-hall* conſtantly do in refuſing to ſet aſide a wrong verdict given in *favour* of the defendant in a criminal caſe, or in an hard action, though it is done every day where a wrong verdict goeth againſt him. In the caſe of the *King* and *Rolfe* coroner of *Kent*, which came on in *Mich.* and *Hill.* the fifth of king *George* 2. the coroner's inqueſt found, that *A. B.* ſitting on his waggon, accidentally fell to the ground; and that the horſes drawing the waggon forward, one of the four wheels cruſhed his head, of which he inſtantly died; and then concluded that the wheel, on which they ſet a ſmall value, *only* moved to his death. A motion was made in behalf of Mr. *Mompeſſon*, lord of the franchiſe, for quaſhing this inquiſition, upon affidavits tending to ſhew that the cart and horſes were equally inſtrumental; which indeed the finding of the jury did ſufficiently imply. But the court was very clear that neither this court nor the coroner can oblige the jury to conclude otherwiſe than they have done, and would not ſuffer the affidavit for quaſhing the inquiſition to be read. A like caſe came on in *Mich.* the 29th of king *George* 2. *The King* againſt *Drew*, coroner of *Middleſex*. The

coroner's jury, upon view of the body of a perſon killed by the like accident, found that one wheel of the waggon *only* moved to the death. The court, on motion in behalf of the lord of the franchiſe, granted a rule for ſhewing cauſe, why the inquiſition ſhould not be quaſhed for this miſbehaviour of the jury. On the day for ſhewing cauſe, Mr. *Hume Campbell*, counſel for the lord of the franchiſe, informed the court, that upon looking into precedents he was ſatisfied he could not ſupport the rule, and thereupon it was diſcharged. The caſe of *The King* and *Rolfe* was mentioned on this occaſion, and greatly relied on. *Foſt. Rep.* 265.

The community, ſays Mr. Juſtice *Foſter*, was ſuppoſed to have an intereſt, as it really had, in the life of every member. And therefore the king, as *caput reipublicæ*, might exact a certain mulct or fine in caſes of homicide, though merely caſual. Upon this principle deodands became due; the weapon with which the party was ſlain by another was a deodand. Irrational creatures, and even inanimate beings, which without the intervention of human means contributed to the death, were deodands, and are ſo to this day. And upon the ſame principle the crown ſhared with the family in the amerciament called *murdrum*; which was an amerciament anciently exacted from the townſhip where a perſon was privately murdered, and the murderer not apprehended; or the dead body of an unknown perſon appearing to have been murthered happened to be found. *Foſt. Rep.* 287, 281.

Diſſenters.

STAT. 1 *Will. & Mar. c.* 18. [*A. D.* 1688. *Intituled*] "An act for exempting their majeſties proteſtant ſubjects, diſſenting from the church of *England*, from the penalties of certain laws."

"Foraſmuch as ſome eaſe to ſcrupulous conſciences in the exerciſe of religion may be an effectual means to unite their majeſties proteſtant ſubjects in intereſt and affection;

The ſeveral laws againſt diſſenters repealed.

Sect. 2. "Be it enacted by the king's and queen's moſt excellent majeſties, by and with the advice and conſent of the lords ſpiritual and temporal, and the commons, in this preſent parliament aſſembled, and by the authority of the ſame, That neither the ſtatute made in the three and twentieth year of the reign of the late queen *Elizabeth*, intituled, *An act to retain the queen's majeſty's ſubjects in their due obedience*; nor the ſtatute made in the twenty-ninth year of the ſaid queen, intituled, *An act for the*

23 Eliz. c. 1.

29 Eliz. c. 6.

more ſpeedy and due execution of certain branches of the ſtatute made in the three and twentieth year of the queen's majeſty's reign, viz. the aforeſaid act; nor that branch or clauſe of a ſtatute made in the firſt year of the reign of the ſaid queen, intituled, *An act for the uniformity of common prayer and ſervice in the church, and adminiſtration of the ſacraments*; whereby all perſons, having no lawful or reaſonable excuſe to be abſent, are required to reſort to their pariſh-church or chapel, or ſome uſual place where the common prayer ſhall be uſed; upon pain of puniſhment by the cenſures of the church, and alſo upon pain that every perſon ſo offending ſhall forfeit for every ſuch offence twelve pence; nor the ſtatute made in the third year of the reign of the late king *James* the Firſt, intituled, *An act for the better diſcovering and repreſſing popiſh recuſants*; nor that other ſtatute made in the ſame year, intituled, *An act to prevent and avoid dangers which may grow by popiſh recuſants*; nor any other law or ſtatute of this realm made againſt papiſts or recuſants, except the ſtatute made in the five and twentieth year of king *Charles* the Second, intituled, *An act for preventing dangers which may happen from popiſh recuſants*; and except alſo the ſtatute made in the thirtieth year of the ſaid king *Charles* the ſecond, intituled, *An act for the more effectual preſerving the king's perſon and government by diſabling papiſts from ſitting in either houſe of parliament*; ſhall be conſtrued to extend to any perſon or perſons diſſenting from the church of *England*, that ſhall take the oaths mentioned in a ſtatute made this preſent parliament, intituled, *An act for removing and preventing all queſtions and diſputes concerning the aſſembling and ſitting of this preſent parliament*; and ſhall make and ſubſcribe the declaration mentioned in a ſtatute made in the thirtieth year of the reign of king *Charles* the Second, intituled, *An act to prevent papiſts from ſitting in either houſe of parliament*; which oaths and declaration the juſtices of peace at the general ſeſſions of the peace to be held for the county or place where ſuch perſon ſhall live, are hereby required to tender and adminiſter to ſuch perſons as ſhall offer themſelves to take, make and ſubſcribe the ſame, and thereof to keep a regiſter: And likewiſe none of the perſons aforeſaid ſhall give or pay, as any fee or reward, to any officer or officers belonging to the court aforeſaid, above the ſum of ſixpence, nor that more than once for his or their entry of his taking the ſaid oaths, and making and ſubſcribing the ſaid declaration; nor above the further ſum of ſix pence for any certificate of the ſame to be made out and ſigned by the officer or officers of the ſaid court.

1 Eliz. c. 2. ſ. 14.

3 Jac. 1. c. 4.

3 Jac 1. c. 5.

Exception, 25 Car. 2. c. 2.

30 Car. 2. ſtat. 2. c. 1.

30 Car. 2. ſtat. 2. c. 1.

Taking declaration to be regiſtred.

Fee for regiſter and certificate.

Sect. 3. "And be it further enacted by the authority aforeſaid, That all and every perſon and perſons already convicted or proſecuted in order to conviction or recuſancy, by indictment, information, action of debt, or otherwiſe, grounded upon the aforeſaid ſtatutes, or any of them, that ſhall take the ſaid oaths mentioned in the ſaid ſtatute made this preſent parliament, and make and ſubſcribe the declaration aforeſaid, in the court of exchequer, or aſſizes or general or quarter-ſeſſions to be held for the county where ſuch perſon lives, and to be thence reſpectively certified into the exchequer, ſhall be thenceforth exempted and diſcharged from all the

Perſons convicted, &c. taking the oaths, &c. ſhall be diſcharged.

the penalties, ſeizures, forfeitures, judgments and executions incurred by force of any of the aforeſaid ſtatutes, without any compoſition, fee or further charge whatſoever."

Sect. 4. " And be it further enacted by the authority aforeſaid, That all and every perſon and perſons that ſhall, as aforeſaid, take the ſaid oaths, and make and ſubſcribe the declaration aforeſaid, ſhall not be liable to any pains, penalties or forfeitures, mentioned in an act made in the five and thirtieth year of the reign of the late queen *Elizabeth*, intituled, *An act to retain the queen's majeſty's ſubjects in their due obedience*; nor in an act made in the two and twentieth year of the reign of the late king *Charles* the Second, intituled, *An act to prevent and ſuppreſs ſeditious conventicles*; nor ſhall any of the ſaid perſons be proſecuted in any eccleſiaſtical court, for or by reaſon of their non-conforming to the church of *England*.

35 Eliz. c. 1.

22 Car. 2. c. 1.

Eccleſiaſtical court.

Private meeting excluded.

Sect. 5. " Provided always, and be it enacted by the authority aforeſaid, That if any aſſembly of perſons diſſenting from the church of *England*, ſhall be had in any place for religious worſhip with the doors locked, barred or bolted during any time of ſuch meeting together, all and every perſon or perſons that ſhall come to and be at ſuch meeting, ſhall not receive any benefit from this law, but be liable to all the pains and penalties of all the aforeſaid laws recited in this act, for ſuch their meeting, notwithſtanding his taking the oaths, and his making and ſubſcribing the declaration aforeſaid.

Tithes ſaved.

Sect. 6. " Provided always, That nothing herein contained ſhall be conſtrued to exempt any of the perſons aforeſaid from paying of tithes or other parochial duties, or any other duties to the church or miniſter, nor from any proſecution in any eccleſiaſtical court, or elſewhere, for the ſame.

Officers ſcrupling oaths, &c. allowed to act by deputy.

Sect. 7. " And be it further enacted by the authority aforeſaid, That if any perſon diſſenting from the church of *England*, as aforeſaid, ſhall hereafter be choſen or otherwiſe appointed to bear the office of high conſtable or petit conſtable, churchwarden, overſeer of the poor, or any other parochial or ward office, and ſuch perſon ſhall ſcruple to take upon him any of the ſaid offices in regard of the oaths, or any other matter or thing required by the law to be taken or done in reſpect of ſuch office, every ſuch perſon ſhall and may execute ſuch office or employment by a ſufficient deputy, by him to be provided, that ſhall comply with the laws on this behalf. Provided always, the ſaid deputy be allowed and approved by ſuch perſon or perſons, in ſuch manner as ſuch officer or officers reſpectively ſhould by law have been allowed and approved.

Perſons in orders how exempted from

17 Car. 2. c. 2. & 13 & 14 Car. 2. c. 4.

Sect. 8. " And be it further enacted by the authority aforeſaid, That no perſon diſſenting from the church of *England* in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of diſſenting proteſtants, that ſhall make and ſubſcribe the declaration aforeſaid, and take the ſaid oaths at the general or quarter-ſeſſions of the peace to be held for the county, town, parts or diviſion where ſuch perſon lives; which court is hereby impowered to adminiſter

adminiſter the ſame, and ſhall alſo declare his approbation of and ſubſcribe the articles of religion mentioned in the ſtatute made in the thirteenth year of the reign of the late queen *Elizabeth*, except the thirty-fourth, thirty-fifth, and thirty-ſixth, and theſe words of the twentieth article, *viz.* [*the church hath power to decree rites or ceremonies, and authority in controverſies of faith, and yet*] ſhall be liable to any of the pains or penalties mentioned in an act made in the ſeventeenth year of the reign of king *Charles* the Second, intituled, *An act for reſtraining non-conformiſts from inhabiting in corporations*; nor the penalties mentioned in the aforeſaid act made in the two and twentieth year of his late majeſty's reign, for or by reaſon of ſuch perſons preaching at any meeting for the exerciſe of religion; nor to the penalty of one hundred pounds mentioned in an act made in the thirteenth and fourteenth of king *Charles* the Second, intituled, *An act for the uniformity of publick prayers and adminiſtration of ſacraments, and other rites and ceremonies: and for eſtabliſhing the form of making, ordaining and conſecrating of biſhops, prieſts and deacons, in the church of* England, for officiating in any congregation for the exerciſe of religion permitted and allowed by this act.

13 Eliz. c. 12. 17 Car. 2. c. 2. 13 & 14 Car. 2. c. 4.

Sect. 9. "Provided always, That the making and ſubſcribing the ſaid declaration, and the taking the ſaid oaths, and making the declaration of approbation and ſubſcription to the ſaid articles, in manner as aforeſaid, by every reſpective perſon or perſons herein before-mentioned, at ſuch general or quarter-ſeſſions of the peace, as aforeſaid, ſhall be then and there entered of record in the ſaid court, for which ſix-pence ſhall be paid to the clerk of the peace, and no more: Provided that ſuch perſon ſhall not at any time preach in any place, but with the doors not locked, barred or bolted, as aforeſaid.

Taking the oaths, &c. to be regiſtred.

Meeting door to be unlocked.

Sect. 10. "And whereas ſome diſſenting proteſtants ſcruple the baptizing of infants; Be it enacted by the authority aforeſaid, That every perſon in pretended holy orders, or pretending to holy orders, or preacher or teacher that ſhall ſubſcribe the aforeſaid articles of religion, except before excepted, and alſo except part of the ſeven and twentieth article touching infant baptiſm, and ſhall take the ſaid oaths, and make and ſubſcribe the declaration aforeſaid, in manner aforeſaid, every ſuch perſon ſhall enjoy all the privileges, benefits and advantages, which any other diſſenting miniſter, as aforeſaid, might have or enjoy by virtue of this act.

Anabaptiſts.

Sect. 11. "And be it further enacted by the authority aforeſaid, That every teacher or preacher in holy orders, or pretended holy orders, that is a miniſter, preacher or teacher of a congregation, that ſhall take the oaths herein required, and make and ſubſcribe the declaration aforeſaid, and alſo ſubſcribe ſuch of the aforeſaid articles of the church of *England*, as are required by this act in manner aforeſaid, ſhall be thenceforth exempted from ſerving upon any jury, or from being choſen or appointed to bear the office of church-warden, overſeer of the poor, or any other parochial or ward office, or other office in any hundred of any ſhire, city, town, pariſh, diviſion or wapentake.

Teachers exempt from offices.

Juſtice of peace may tender the oaths, &c.

Sect. 12. "And be it further enacted by the authority aforeſaid, That every juſtice of the peace may at any time hereafter require any perſon, that goes to any meeting for exerciſe of religion, to make and ſubſcribe the declaration aforeſaid, and alſo to take the oaths or declaration of fidelity herein after mentioned, in caſe ſuch perſon ſcruples the taking of an oath; and upon refuſal thereof, ſuch juſtice of the peace is hereby required to commit ſuch perſon to priſon without bail or mainprize, and to certify the name of ſuch perſon to the next general or quarter-ſeſſions of the peace to be held for that county, city, town, part or diviſion where ſuch perſon then reſides; and if ſuch perſon ſo committed ſhall, upon a ſecond tender at the general or quarter-ſeſſions, refuſe to make and ſubſcribe the declaration aforeſaid, ſuch perſon refuſing ſhall be then and there recorded, and he ſhall be taken thenceforth to all intents and purpoſes for a popiſh recuſant convict, and ſuffer accordingly, and incur all the penalties and forfeitures of all the aforeſaid laws.

Penalty for refuſing.

Quakers how exempted. Altered as to quakers by 8 Geo. 1. c. 6.

Sect. 13. "And whereas there are certain other perſons, diſſenters from the church of *England*, who ſcruple the taking of any oath; Be it enacted by the authority aforeſaid, That every ſuch perſon ſhall make and ſubſcribe the aforeſaid declaration, and alſo this declaration of fidelity following, *viz.*

Declaration of fidelity.

"I *A. B.* do ſincerely promiſe and ſolemnly declare before God and the world, that I will be true and faithful to king *William* and queen *Mary*; and I do ſolemnly profeſs ond declare, that I do from my heart abhor, deteſt and renounce, as impious and heretical, that damnable doctrine and poſition, *That princes excommunicated or deprived by the pope, or any authority of the ſee of* Rome, *may be depoſed or murthered by their ſubjects, or any other whatſoever.* And I do declare, that no foreign prince, perſon, prelate, ſtate or potentate, hath or ought to have, any power, juriſdiction, ſuperiority, pre-eminence or authority eccleſiaſtical or ſpiritual within this realm."

And ſhall ſubſcribe a profeſſion of their Chriſtian belief in theſe words:

Profeſſion.

"I *A. B.* profeſs faith in God the Father, and in Jeſus Chriſt his eternal Son, the true God, and in the Holy Spirit, one God bleſſed for evermore; and do acknowledge the holy ſcriptures of the Old and New Teſtament to be given by divine inſpiration."

Which declarations and ſubſcription ſhall be made and entered of record at the general quarter-ſeſſions of the peace for the county, city or place where every ſuch perſon ſhall then reſide. And every ſuch perſon that ſhall make and ſubſcribe the two declarations and profeſſion aforeſaid, being thereunto required, ſhall be exempted from all the pains and penalties of all and every the afore-mentioned ſtatutes made againſt popiſh recuſants or proteſtant nonconformiſts; and alſo from the penalties of an act made in the fifth year of the reign of the late queen *Elizabeth*, intituled, *An act for the aſſurance of the queen's royal power*

5 Eliz. c. 1.

over

over all eſtates and ſubjects within her dominions, for or by reaſon of ſuch perſons not taking or refuſing to take the oath mentioned in the ſaid act; and alſo from the penalties of an act made in the thirteenth and fourteenth years of the reign of king *Charles* the Second, intituled, *An act for preventing miſchiefs that may ariſe by certain perſons called* Quakers, *refuſing to take lawful oaths*; and enjoy all other the benefits, privileges and advantages under the like limitations, proviſoes and conditions, which any other diſſenters ſhould or ought to enjoy by virtue of this act. 13 & 14 Car. 2. c. 1.

Sect. 14. " Provided always, and be it enacted by the authority aforeſaid, That in caſe any perſon ſhall refuſe to take the ſaid oaths, when tendred to them, which every juſtice of the peace is hereby impowered to do, ſuch perſon ſhall not be admitted to make and ſubſcribe the two declarations aforeſaid, though required thereunto either before any juſtice of the peace, or at the general or quarter-ſeſſions before or after any conviction of popiſh recuſancy, as aforeſaid, unleſs ſuch perſon can, within thirty-one days after ſuch tender of the declarations to him, produce two ſufficient proteſtant witneſſes, to teſtify upon oath that they believe him to be a proteſtant diſſenter; or a certificate under the hands of four proteſtants, who are conformable to the church of *England*, or have taken the oaths and ſubſcribed the declaration above-mentioned, and ſhall alſo produce a certificate, under the hands and ſeals of ſix or more ſufficient men of the congregation to which he belongs, owning him for one of them. How purged after refuſal of the oaths.

Sect. 15. " Provided alſo, and be it enacted by the authority aforeſaid, That until ſuch certificate under the hands of ſix of his congregation, as aforeſaid, be produced, and two proteſtant witneſſes come to atteſt his being a proteſtant diſſenter, or a certificate under the hands of four proteſtants, as aforeſaid, be produced, the juſtice of the peace ſhall and hereby is required to take a recognizance with two ſureties in the penal ſum of fifty pounds, to be levied of his goods and chattels, lands and tenements, to the uſe of the king's and queen's majeſties, their heirs and ſucceſſors, for his producing the ſame; and if he cannot give ſuch ſecurity, to commit him to priſon, there to remain until he has produced ſuch certificates, or two witneſſes, as aforeſaid.

Sect. 16. " Provided always, and it is the true intent and meaning of this act, That all the laws made and provided for the frequenting of divine ſervice on the Lord's day, commonly called *Sunday*, ſhall be ſtill in force, and executed againſt all perſons that offend againſt the ſaid laws, except ſuch perſons come to ſome congregation or aſſembly of religious worſhip, allowed or permitted by this act. Laws for divine ſervice in force.

Sect. 17. " Provided always, and be it further enacted by the authority aforeſaid, That neither this act, nor any clauſe, article or thing herein contained, ſhall extend or be conſtrued to extend to give any eaſe, benefit or advantage to any papiſt or popiſh recuſant whatſoever, or any perſon that ſhall deny in his preaching or writing the doctrine of the Bleſſed Trinity, as it is declared in the aforeſaid articles of religion. Papiſts, &c. excepted.

Diſturbers of religious worſhip how puniſhed. See 1 Geo. 1. ſtat. 2. c. 5. ſ. 4.

Sect. 18. "Provided always, and be it enacted by the authority aforeſaid, That if any perſon or perſons, at any time or times after the tenth day of *June*, do, and ſhall willingly and of purpoſe, maliciouſly or contemptuouſly come into any cathedral or pariſh church, chapel or other congregation permitted by this act, and diſquiet or diſturb the ſame, or miſuſe any preacher or teacher, ſuch perſon or perſons, upon proof thereof before any juſtice of peace, by two or more ſufficient witneſſes, ſhall find two ſureties to be bound by recognizance in the penal ſum of fifty pounds, and in default of ſuch ſureties ſhall be committed to priſon, there to remain till the next general or quarter-ſeſſions; and upon conviction of the ſaid offence at the ſaid general or quarter-ſeſſions, ſhall ſuffer the pain and penalty of twenty pounds, to the uſe of the king's and queen's majeſties, their heirs and ſucceſſors.

Place for worſhip to be certified.

Sect. 19. "Provided always, That no congregation or aſſembly for religious worſhip ſhall be permitted or allowed by this act, until the place of ſuch meeting ſhall be certified to the biſhop of the dioceſe, or to the archdeacon of that archdeaconry, or to the juſtices of the peace at the general or quarter-ſeſſions of the peace for the county city or place in which ſuch meeting ſhall be held, and regiſtred in the ſaid biſhop's or archdeacon's court reſpectively, or recorded at the ſaid general or quarter-ſeſſions; the regiſter or clerk of the peace whereof reſpectively is hereby required to regiſter the ſame, and to give certificate thereof to ſuch perſon as ſhall demand the ſame, for which there ſhall be no greater fee nor reward taken than the ſum of ſixpence."

Stat. 10 *Ann. c.* 2. [*A. D.* 1711.] *made, among other purpoſes,* "for confirming the toleration granted to proteſtant diſſenters by an act intituled, *An act for exempting their majeſties proteſtant ſubjects, diſſenting from the church of* England, *from the penalties of certain laws,* and for ſupplying the defects thereof."

If any diſſenter, (not in holy orders, &c.) who would have been entitled to the benefit of that act, if he had taken the oaths, &c. is or ſhall be proſecuted upon any penal ſtatute, &c. ſhall, during ſuch proſecution take the oaths, &c. or

Sect. 8. "And for the rendering the ſaid laſt mentioned act more effectual according to the true intent and meaning thereof; Be it further enacted and declared by the authority aforeſaid, That if any perſon diſſenting from the church of *England*, (not in holy orders or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation) who ſhould have been entitled to the benefit of the ſaid laſt-mentioned act, if ſuch perſon had duly taken, made and ſubſcribed the oaths and declaration, or otherwiſe qualified him or herſelf, as required by the ſaid act, and now is or ſhall be proſecuted upon or by virtue of any of the penal ſtatutes, from which proteſtant diſſenters are exempted by the ſaid act, ſhall at any time during ſuch proſecution, take, make and ſubſcribe the ſaid oaths and declaration, or being of the people called *Quakers*, ſhall make and ſubſcribe the aforeſaid declaration, and alſo the declaration of fidelity, and ſubſcribe the profeſſion of their Chriſtian belief according to the ſaid act, or before any two of her majeſty's juſtices of the

peace (who are hereby required to take and return the ſame to the next quarter-ſeſſions of the peace, to be there recorded) ſuch perſon ſhall be, and is hereby entitled to the benefit of the ſaid act, as fully and effectually as if ſuch perſon had duly qualified himſelf within the time preſcribed by the ſaid act, and ſhall be thenceforth exempted and diſcharged from all the penalties and forfeitures incurred by force of any the aforeſaid penal ſtatutes.

being a quaker ſhall make the declaration, &c. he ſhall be intitled to the benefit of the ſaid act.

Sect. 9. " And whereas it is or may be doubted whether a preacher or teacher of any congregation of diſſenting proteſtants, duly in all reſpects qualified according to the ſaid act, be allowed, by virtue of the ſaid act, to officiate in any congregation in any county, other than that in which he ſo qualified himſelf, although in a congregation or place of meeting duly certified and regiſtred as is required by the ſaid act; Be it declared and enacted by the authority aforeſaid, That any ſuch preacher or teacher, ſo duly qualified according to the ſaid act, ſhall be and is hereby allowed to officiate in any congregation, although the ſame be not in the county wherein he was ſo qualified; provided that the ſaid congregation or place of meeting hath been, before ſuch officiating, duly certified and regiſtred or recorded according to the ſaid act: And ſuch preacher or teacher ſhall, if required, produce a certificate of his having ſo qualified himſelf, under the hand of the clerk of the peace for the county or place where he ſo qualified himſelf; which certificate ſuch clerk of the peace is hereby required to make; and ſhall alſo before any juſtice of the peace of ſuch county or place where he ſhall ſo officiate, make and ſubſcribe ſuch declaration, and take ſuch oaths as are mentioned in the ſaid act, if thereunto required.

A diſſenting teacher, qualified according to the ſaid act, may officiate in any other county than where he was qualified.

Such teacher to produce a certificate, &c. of his having qualified himſelf, &c. and ſhall if required make the declaration, &c.

Diſtreſs.

DISTRESS is the thing which is taken and diſtrained upon any land for rent behind, or other duty, or for hurt done, although the property of the thing belongeth to a ſtranger. *Termes de la ley.*

Stat. 2 *Will. & Mar. ſeſſ.* 1. *c.* 5. [*A. D.* 1690. *Intituled*] "An act for enabling ſale of goods diſtrained for rent, in caſe the rent be not paid in a reaſonable time."

"Whereas the moſt ordinary and ready way for recovery of arrears of rent is by diſtreſs; yet ſuch diſtreſſes not being to be ſold, but only detained as pledges for enforcing the payment of ſuch rent, the perſons diſtraining have little benefit thereby: For the remedying whereof,

Goods diſtrained for rent may be appraiſed and ſold.

Sect. 2. "Be it enacted and ordained by the king's and queen's moſt excellent majeſties, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the firſt day of *June* in the year of our Lord one thouſand ſix hundred and ninety, that where any goods or chattels ſhall be diſtrained for any rent reſerved and due upon any demiſe, leaſe or contract whatſoever, and the tenant or owner of the goods ſo diſtrained ſhall not within five days next after ſuch diſtreſs taken, and notice thereof (with the cauſe of ſuch taking) left at the chief manſion-houſe, or other moſt notorious place on the premiſſes charged with the rent diſtrained for, replevy the ſame, with ſufficient ſecurity to be given to the ſheriff, according to law, that then in ſuch caſe, after ſuch diſtreſs and notice as aforeſaid, and expiration of the ſaid five days, the perſon diſtraining ſhall and may, with the ſheriff or under ſheriff of the county, or with the conſtable of the hundred, pariſh or place where ſuch diſtreſs ſhall be taken (who are hereby required to be aiding and aſſiſting therein) cauſe the goods and chattels ſo diſtrained to be appraiſed by two ſworn appraiſers (whom ſuch ſheriff, under-ſheriff, or conſtable, are hereby impowered to ſwear) to appraiſe the ſame truly, according to the beſt of their underſtandings; and after ſuch appraiſement ſhall and may lawfully ſell the goods and chattels ſo diſtrained for the beſt price can be gotten for the ſame, towards ſatisfaction of the rent for which the ſaid goods and chattels ſhall be diſtrained, and of the charges of ſuch diſtreſs, appraiſement and ſale, leaving the overplus (if any) in the hands of the ſaid ſheriff, under-ſheriff or conſtable, for the owner's uſe.

Farther provided for by 8 Annæ, c. 14.

Cornlooſe, &c. may be detained and ſold.

Sect. 3. "And whereas no ſheaves or cocks of corn looſe or in the ſtraw, or hay in any barn or granary, or on any hovel, ſtack or rick, can by the law be diſtrained, or otherwiſe ſecured for rent, whereby landlords are oftentimes couſened and deceived by their tenants, who ſell their corn, grain

grain and hay, to ſtrangers, and remove the ſame from the premiſſes chargeable with ſuch rent, and thereby avoid the payment of the ſame; Be it further enacted by the authority aforeſaid, That for remedying the ſaid practice and deceit, it ſhall and may, from and after the ſaid firſt day of *June*, be lawful to and for any perſon or perſons having rent arrear and due upon any ſuch demiſe, leaſe or contract as aforeſaid, to ſeize and ſecure any ſheaves or cocks of corn, or corn looſe or in the ſtraw, or hay lying or being in any barn or granary, or upon any hovel, ſtack or rick, or otherwiſe upon any part of the land or pound charged with ſuch rent, and to lock up or detain the ſame in the place where the ſame ſhall be found, for or in the nature of a diſtreſs, until the ſame ſhall be replevied upon ſuch ſecurity to be given as aforeſaid; and in default of replevying the ſame as aforeſaid, within the time aforeſaid, to ſell the ſame after ſuch appraiſement thereof to be made; ſo as nevertheleſs ſuch corn, grain or hay ſo diſtrained as aforeſaid, be not removed by the perſon or perſons diſtraining, to the damage of the owner thereof, out of the place where the ſame ſhall be found and ſeized, but be kept there (as impounded) until the ſame ſhall be replevied, or ſold in default of replevying the ſame within the time aforeſaid.

Sect. 4. "And be it further enacted by the authority aforeſaid, That upon any pound-breach or reſcous of goods or chattels diſtrained for rent, the perſon or perſons grieved thereby ſhall, in a ſpecial action upon the caſe for the wrong thereby ſuſtained, recover his and their treble damages and coſts of ſuit againſt the offender or offenders in any ſuch reſcous or pound-breach, any or either of them, or againſt the owners of the goods diſtrained, in caſe the ſame be afterwards found to have come to his uſe or poſſeſſion.

Treble damages for pound-breach.

1 Lutw. 213; Carthew 321.

Sect. 5. "Provided always, and be it further enacted, That in caſe any ſuch diſtreſs and ſale, as aforeſaid, ſhall be made by virtue or colour of this preſent act for rent pretended to be arrear and due, where in truth no rent is arrear or due to the perſon or perſons diſtraining, or to him or them in whoſe name or names, or right, ſuch diſtreſs ſhall be taken as aforeſaid; that then the owner of ſuch goods or chattels diſtrained and ſold as aforeſaid, his executors or adminiſtrators ſhall and may, by action of treſpaſs, or upon the caſe, to be brought againſt the perſon or perſons ſo diſtraining, any or either of them, his or their executors or adminiſtrators, recover double of the value of the goods or chattels ſo diſtrained and ſold, together with full coſts of ſuit."

Double damages and coſts againſt wrongful diſtrainer.

Stat. 8 *Ann. c.* 14. [*A. D.* 1709. *Intituled*] "An act for the better ſecurity of rents, and to prevent frauds committed by tenants."

"For the more eaſy and effectual recovery of rents reſerved on leaſes for life or lives, term of years, at will, or otherwiſe; Be it enacted by the queen's moſt excellent majeſty, by and with the advice and conſent of

the lords ſpiritual temporal, and commons in parliament aſſembled, and by the authority of the ſame, That from and after the firſt day of *May*, which ſhall be in the year of our Lord one thouſand ſeven hundred and ten, no goods or chattels whatſoever, lying or being in or upon any meſſuage, lands or tenements, which are or ſhall be leaſed for life or lives, term of years, at will or otherwiſe, ſhall be liable to be taken by virtue of any execution on any pretence whatſoever, unleſs the party at whoſe ſuit the ſaid execution is ſued out, ſhall before the removal of ſuch goods from off the ſaid premiſſes, by virtue of ſuch execution or extent, pay to the landlord of the ſaid premiſſes, or his bailiff, all ſuch ſum or ſums of money as are or ſhall be due for rent for the ſaid premiſſes at the time of the taking ſuch goods or chattels by virtue of ſuch execution; Provided the ſaid arrears of rent do not amount to more than one year's rent, and in caſe the ſaid arrears ſhall exceed one year's rent, then the ſaid party, at whoſe ſuit ſuch execution is ſued out, paying the ſaid landlord or his bailiff one year's rent, may proceed to execute his judgment as he might have done before the making of this act; and the ſheriff or other officer is hereby impowered and required to levy and pay to the plaintiff as well the money ſo paid for rent as the execution-money.

After the firſt of May 1710, no goods, &c. ſhall be taken in execution, &c. unleſs the party before removal of the goods, &c. pay the landlord the rent due.

Provided it amount to no more than one year's rent.

The ſheriff, &c. to levy the rent as well as the execution-money.

Sect. 2. "And be it further enacted by the authority aforeſaid, That in caſe any leſſee for life or lives, term of years, at will or otherwiſe, of meſſuages, lands or tenements, upon demiſe whereof any rents are or ſhall be reſerved or made payable, ſhall, from and after the ſaid firſt day of *May*, fraudulently or clandeſtinely convey or carry off or from ſuch demiſed premiſſes his goods or chattels, with intent to prevent the landlord or leſſor from diſtraining the ſame for arrears of ſuch rent ſo reſerved, as aforeſaid, it ſhall and may be lawful to and for ſuch leſſor or landlord, or any perſon or perſons by him for that purpoſe lawfully impowered, within the ſpace of five days next enſuing ſuch conveying away or carrying off ſuch goods or chattels, as aforeſaid, to take and ſeize ſuch goods and chattels where ever the ſame ſhall be found, as a diſtreſs for the ſaid arrears of ſuch rent; and the ſame to ſell, or otherwiſe diſpoſe of, in ſuch manner as if the ſaid goods and chattels had actually been diſtrained by ſuch leſſor or landlord, in and upon ſuch demiſed premiſſes for ſuch arrears of rent; any law, cuſtom or uſage to the contrary in any wiſe notwithſtanding.

If after the ſaid firſt of May, any leſſee, &c. ſhall fraudulently carry off his goods, &c. from the premiſſes, the leſſor, &c. may within five days after ſeize ſuch goods, &c. and ſell the ſame as if they had been diſtrained on the premiſſes.

Sect. 3. "Provided nevertheleſs, That nothing in this act contained ſhall extend, or be conſtrued to extend, to impower ſuch leſſor or landlord to take or ſeize any goods or chattels as a diſtreſs for arrears of rent, which ſhall be ſold *bona fide*, and for a valuable conſideration, before ſuch ſeizure made; any thing herein contained to the contrary notwithſtanding.

Proviſo, ſuch leſſor, &c. ſhall not ſeize any goods, &c. which ſhall be bona fide ſold before ſuch ſeizure.

Sect. 4. "And whereas no action of debt lies againſt a tenant for life or lives, for any arrears of rent, during the continuance of ſuch eſtate for life or lives; Be it enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May*, it ſhall and may be lawful for any perſon or perſons, having any rent in arrear, or due upon any leaſe or demiſe for life

After the firſt of May an action of debt may be brought againſt tenant

life or lives, to bring an action or actions of debt for ſuch arrears of rent, in the ſame manner they might have done in caſe ſuch rent were due, and reſerved upon a leaſe for years.

for life for rent due upon a leaſe for life in the ſame manner as if it were due on a leaſe for years.

- *Sect.* 5. " And it is hereby further enacted and declared by the authority aforeſaid, That all diſtreſſes hereby impowered to be made, as aforeſaid, ſhall be liable to ſuch ſales, and in ſuch manner, and the monies ariſing by ſales to be diſtributed in like manner as by an act made in the ſecond year of the reign of their late majeſties king *William* and queen *Mary*, [intituled, *An act for enabling the ſale of goods diſtrained for rent, in caſe the rent be not paid in reaſonable time*,] in that behalf directed and appointed.

Diſtreſſes liable to ſuch ſales, and to be ſo diſtributed, as by the act 2 W. & M. Seſſ. 1. c. 5. is directed.

Sect. 6. " Alſo whereas tenants *per auter vie* and leſſees for years, or at will, frequently hold over the tenements to them demiſed, after the determination of ſuch leaſes: And whereas after the determination of ſuch or any other leaſes, no diſtreſs can by law be made for any arrears of rent that grew due on ſuch reſpective leaſes before the determination thereof; It is hereby further enacted by the authority aforeſaid, That from and after the ſaid firſt day of *May* one thouſand ſeven hundred and ten, it ſhall and may be lawful for any perſon or perſons, having any rent in arrear, or due upon any leaſe for life or lives, or for years, or at will, ended or determined, to diſtrain for ſuch arrears, after the determination of the ſaid reſpective leaſes, in the ſame manner as they might have done if ſuch leaſe or leaſes had not been ended or determined.

Rent in arrear upon a leaſe for life, &c. expired, may be diſtrained for after the determination of the ſaid leaſe, in the ſame manner as if the leaſe had not been ended.

- *Sect.* 7. " Provided, That ſuch diſtreſs be made within the ſpace of ſix kalendar months after the determination of ſuch leaſe, and during the continuance of ſuch landlord's title or intereſt, and during the poſſeſſion of the tenant from whom ſuch arrear became due.

Diſtreſs to be within ſix months after the end of the leaſe, and during the landlord's title and tenant's poſſeſſion.

- *Sect.* 8. " Provided always, and it is hereby enacted and declared by the authority aforeſaid, That nothing in this act contained ſhall extend, or be conſtrued to extend to let, hinder or prejudice her majeſty, her heirs or ſucceſſors, in the levying, recovering or ſeizing any debts, fines, penalties or forfeitures, that are or ſhall be due, payable or anſwerable to her majeſty, her heirs or ſucceſſors; but that it ſhall and may be lawful for her majeſty, her heirs and ſucceſſors, to levy, recover and ſeize ſuch debts, fines, penalties and forfeitures, in the ſame manner as if this act had never been made; any thing in this act contained to the contrary thereof in any wiſe notwithſtanding."

This act ſhall not hinder the queen, &c. to levy, &c. any debts, fines, &c. due to the crown.

- **Stat.** 4 *Geo.* 2. *c.* 28. [*A. D.* 1731. *Intituled*] " An act for the more effectual preventing of frauds committed by tenants, and for the more eaſy recovery of rents, and renewal of leaſes."

- " For ſecuring to leſſors and land-owners their juſt rights, and to prevent frauds frequently committed by tenants; Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual

and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That in caſe any tenant or tenants for any term of life, lives or years, or other perſon or perſons, who are or ſhall come into poſſeſſion of any lands, tenements or hereditaments, by, from or under, or by colluſion with ſuch tenant or tenants, ſhall wilfully hold over any lands, tenements or hereditaments, after the determination of ſuch term or terms; and after demand made, and notice in writing given, for delivering the poſſeſſion thereof, by his or their landlords or leſſors, or the perſon or perſons to whom the remainder or reverſion of ſuch lands, tenements or hereditaments ſhall belong, his or their agent or agents thereunto lawfully authorized; then, and in ſuch caſe, ſuch perſon or perſons ſo holding over, ſhall, for and during the time he, ſhe and they ſhall ſo hold over, or keep the perſon or perſons intitled, out of poſſeſſion of the ſaid lands, tenements and hereditaments, as aforeſaid, pay to the perſon or perſons ſo kept out of poſſeſſion, their executors, adminiſtrators or aſſigns, at the rate of double the yearly value of the lands, tenements and hereditaments ſo detained, for ſo long time as the ſame are detained, to be recovered in any of his majeſty's courts of record, by action of debt, whereunto the defendant or defendants ſhall be obliged to give ſpecial bail, againſt the recovering of which ſaid penalty there ſhall be no relief in equity.

Perſons holding over lands, &c. after expiration of leaſes, to pay double the yearly value.

Sect. 2. "And whereas great inconveniencies do frequently happen to leſſors and landlords, in caſes of re-entry for non-payment of rent, by reaſon of the many niceties that attend re-entries at common law; and foraſmuch as when a legal re-entry is made, the landlord or leſſor muſt be at the expence, charge and delay of recovering in ejectment, before he can obtain the actual poſſeſſion of the demiſed premiſſes; and it often happens that after ſuch a re-entry made, the leſſee or his aſſignee, upon one or more bills filed in a court of equity, not only holds out the leſſor or landlord, by an injunction, from recovering the poſſeſſion, but likewiſe pending the ſaid ſuit, do run much more in arrear, without giving any ſecurity for the rents due, when the ſaid re-entry was made, or which ſhall or do afterwards incur: For remedy whereof, Be it enacted by the authority aforeſaid, That in all caſes between landlord and tenant, from and after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-one, as often as it ſhall happen that one half year's rent ſhall be in arrear, and the landlord or leſſor to whom the ſame is due hath right by law to re-enter for the non-payment thereof, ſuch landlord or leſſor ſhall and may, without any formal demand or re-entry, ſerve a declaration in ejectment for the recovery of the demiſed premiſſes, or in caſe the ſame cannot be legally ſerved, or no tenant be in actual poſſeſſion of the premiſſes, then to affix the ſame upon the door of any demiſed meſſuage; or in caſe ſuch ejectment ſhall not be for the recovery of any meſſuage, then upon ſome notorious place of the lands, tenements or herediments, comprized in ſuch declaration in ejectment, and ſuch affixing ſhall be deemed legal ſervice thereof; which ſervice, or affixing ſuch declaration in eject-

On half a year's rent in arrear, landlord may re-enter, ſerving a declaration of ejectment.

ejectment, ſhall ſtand in the place and ſtead of a demand and re-entry; and in caſe of judgment againſt the caſual ejector or nonſuit for not confeſſing leaſe, entry and *ouſter*, it ſhall be made appear to the court where the ſaid ſuit is depending, by affidavit, or be proved upon the trial, in caſe the defendant appears, that half a year's rent was due before the ſaid declaration was ſerved, and that no ſufficient diſtreſs was to be found on the demiſed premiſſes, countervailing the arrears then due, and that the leſſor or leſſors in ejectment had power to re-enter; then, and in every ſuch caſe, the leſſor or leſſors in ejectment ſhall recover judgment and execution, in the ſame manner as if the rent in arrear had been legally demanded, and a re-entry made; and in caſe the leſſee or leſſees, his, her or their aſſignee or aſſignees, or other perſon or perſons claiming or deriving under the ſaid leaſes, ſhall permit and ſuffer judgment to be had and recovered on ſuch ejectment, and execution to be executed thereon, without paying the rent and arrears, together with full coſts, and without filing any bill or bills for relief in equity, within ſix calendar months after ſuch execution executed; then, and in ſuch caſe, the ſaid leſſee or leſſees, his, her or their aſſignee or aſſignees, and all other perſons claiming and deriving under the ſaid leaſe, ſhall be barred and foreclоſed from all relief or remedy in law or equity, other than by writ of error, for reverſal of ſuch judgment, in caſe the ſame ſhall be erroneous; and the ſaid landlord or leſſor ſhall from thenceforth hold the ſaid demiſed premiſſes diſcharged from ſuch leaſe; and if on ſuch ejectment verdict ſhall paſs for the defendant or defendants, or the plaintiff or plaintiffs ſhall be nonſuited therein, except for the defendant or defendants not confeſſing leaſe, entry, and *ouſter*; then in every ſuch caſe ſuch defendant or defendants ſhall have and recover his, her and their full coſts: Provided always, That nothing herein contained ſhall extend to bar the right of any mortgagee or mortgagees of ſuch leaſe, or any part thereof, who ſhall not be in poſſeſſion, ſo as ſuch mortgagee or morgagees ſhall and do, within ſix calendar months after ſuch judgment obtained, and execution executed, pay all rent in arrear, and all coſts and damages ſuſtained by ſuch leſſor, perſon or perſons intitled to the remainder or reverſion, as aforeſaid, and perform all the covenants and agreements, which on the part and behalf of the firſt leſſee or leſſees are and ought to be performed.

When leſſor in ejectment may recover judgment, &c.

Not to bar the right of any mortgagee.

Sect. 3. "And be it further enacted by the authority aforeſaid, That in caſe the ſaid leſſee or leſſees, his, her or their aſſignee or aſſignees, or other perſon or perſons claiming any right, title or intereſt, in law or equity, of, in or to the ſaid leaſe, ſhall, within the time aforeſaid, file one or more bill or bills, for relief in any court of equity, ſuch perſon or perſons ſhall not have or continue any injunction, againſt the proceedings at law on ſuch ejectment, unleſs he, ſhe or they do or ſhall, within forty days next after a full and perfect anſwer ſhall be filed by the leſſor or leſſors of the plaintiff in ſuch ejectment, bring into court, and lodge with the proper officer ſuch ſum and ſums of money as the leſſor or leſſors of

Leſſees filing bill in equity, not to have an injunction againſt proceeding at law, &c.

the plaintiff in the ſaid ejectment ſhall, in his, her or their anſwer, ſwear to be due and in arrear, over and above all juſt allowances, and alſo the coſts taxed in the ſaid ſuit, there to remain till the hearing of the cauſe, or to be paid out to the leſſor or landlord, on good ſecurity, ſubject to the decree of the court; and in caſe ſuch bill or bills ſhall be filed within the time aforeſaid; and after execution is executed, the leſſor or leſſors of the plaintiff ſhall be accountable only for ſo much, and no more, as he, ſhe or they ſhall really and *bona fide*, without fraud, deceit or wilful neglect, make of the demiſed premiſſes, from the time of his, her or their entering into the actual poſſeſſion thereof; and if what ſhall be ſo made by the leſſor or leſſors of the plaintiff, happen to be leſs than the rent reſerved on the ſaid leaſe, then the ſaid leſſee or leſſees, his, her or their aſſignee or aſſignees, before he, ſhe or they ſhall be reſtored to his, her or their poſſeſſion or poſſeſſions, ſhall pay ſuch leſſor or leſſors, or landlord or landlords, what the money ſo by them made, fell ſhort of the reſerved rent, for the time ſuch leſſor or leſſors of the plaintiff, landlord or landlords, held the ſaid lands.

Tenant paying all rent with coſts, proceedings to ceaſe.

Sect. 4. "Provided always, and be it further enacted by the authority aforeſaid, That if the tenant or tenants, his, her or their aſſignee or aſſignees, do or ſhall, at any time before the trial in ſuch ejectment, pay or tender to the leſſor or landlord, his executors or adminiſtrators, or his, her or their attorney in that cauſe, or pay into the court where the ſame cauſe is depending, all the rent and arrears, together with the coſts; then, and in ſuch caſe, all further proceedings on the ſaid ejectment ſhall ceaſe and be diſcontinued; and if ſuch leſſee or leſſees, his, her or their executors, adminiſtrators or aſſigns, ſhall, upon ſuch bill filed as aforeſaid, be relieved in equity, he, ſhe and they ſhall have, hold, and enjoy the demiſed lands, according to the leaſe thereof made, without any new leaſe to be thereof made to him, her or them.

Method of recovering ſeck rents, &c.

Sect. 5. "And whereas the remedy for recovering rents, ſeck rents of aſſize, and chief rents, are tedious and difficult; Be it therefore enacted by the authority aforeſaid, That from and after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-one, all and every perſon or perſons, bodies politick and corporate, ſhall and may have the like remedy by diſtreſs, and by impounding and ſelling the ſame, in caſes of rents, ſeck rents of aſſize and chief rents, which have been duly anſwered or paid for the ſpace of three years, within the ſpace of twenty years before the firſt day of this preſent ſeſſion of parliament, or ſhall be hereafter created, as in caſe of rent reſerved upon leaſe; any law or uſage to the contrary notwithſtanding.

Sect. 6. "And whereas many perſons hold conſiderable eſtates by leaſes for lives or years, and leaſe out the ſame in parcels to ſeveral under tenants: And whereas many of thoſe leaſes cannot by law be renewed without a ſurrender of all the under leaſes derived out of the ſame, ſo that it is in the power of any ſuch under tenants to prevent or delay the renewing of the principal leaſe, by refuſing to ſurrender their under leaſes, notwith-

notwithſtanding they have covenanted ſo to do, to the great prejudice of their immediate landlords, the firſt leſſees: for preventing ſuch inconveniencies, and for making the renewal of leaſes more eaſy for the future; Be it enacted by the authority aforeſaid, That in caſe any leaſe ſhall be duly ſurrendered, in order to be renewed, and a new leaſe made and executed by the chief landlord or landlords, the ſame new leaſe ſhall, without a ſurrender of all or any the under leaſes, be as good and valid, to all intents and purpoſes, as if all the under leaſes derived thereout had been likewiſe ſurrendered at or before the taking of ſuch new leaſe; and all and every perſon and perſons, in whom any eſtate for life or lives, or for years, ſhall from time to time be veſted by virtue of ſuch new leaſe, and his, her and their executors and adminiſtrators, ſhall be intitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under leſſees ſhall hold and enjoy the meſſuages, lands and tenements in the reſpective under leaſes compriſed, as if the original leaſes, out of which the reſpective under leaſes are derived, had been ſtill kept on foot and continued, and the chief landlord and landlords ſhall have and be intitled to ſuch and the ſame remedy, by diſtreſs or entry in and upon the meſſuages, lands, tenements and hereditaments compriſed in any ſuch under leaſe, for the rents and duties reſerved by ſuch new leaſe, ſo far as the ſame exceed not the rents and duties reſerved in the leaſe, out of which ſuch under leaſe was derived, as they would have had in caſe ſuch former leaſe had been ſtill continued, or as they would have had in caſe the reſpective under leaſes had been renewed under ſuch new principal leaſe; any law, cuſtom or uſage to the contrary hereof notwithſtanding.

Chief leaſes may be renewed without ſurrendering all the under leaſes.

Sect. 7. "Provided always, That nothing in this act contained ſhall extend to that part of *Great Britain* called *Scotland*.

Not to extend to Scotland.

Stat. 11 *Geo.* 2. *c.* 19. [*A. D.* 1738. *Intituled*] "An act for the more effectual ſecuring the payment of rents, and preventing frauds by tenants."

"Whereas the ſeveral laws heretofore made for the better ſecurity of rents, and to prevent frauds committed by tenants, have not proved ſufficient to obtain the good ends and purpoſes deſigned thereby, but rather the fraudulent practices of tenants, and the miſchief intended by the ſaid acts to be prevented, have of late years increaſed, to the great loſs and damage of their leſſors and landlords: For remedy whereof, may it pleaſe your moſt excellent majeſty that it may be enacted; and be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That from and after the twenty-fourth day of *June* in the year of our Lord one thouſand ſeven hundred and thirty-eight, in caſe any tenant or tenants, leſſee or leſſees for life or lives, term of years, at will, ſufferance or otherwiſe, of any meſſuages, lands, tenements or hereditaments, upon the demiſe or holding whereof any rent

Preamble.

Landlords may diſtrain and ſell goods fraudulently carried off the premiſſes.

rent is or ſhall be reſerved, due or made payable, ſhall fraudlently or clandeſtinely convey away, or carry off or from ſuch premiſſes, his, her or their goods or chattels, to prevent the landlord or leſſor, landlords or leſſors, from diſtraining the ſame for arrears of rent ſo reſerved, due or made payable; it ſhall and may be lawful to and for every landlord or leſſor, landlords or leſſors, within that part of *Great Britain* called *England*, dominion of *Wales*, or the town of *Berwick* upon *Tweed*, or any perſon or perſons by him, her or them for that purpoſe lawfully impowered, within the ſpace of thirty days next enſuing ſuch conveying away or carrying off ſuch goods or chattels as aforeſaid, to take and ſeize ſuch goods and chattels, wherever the ſame ſhall be found, as a diſtreſs for the ſaid arrears of rent; and the ſame to ſell or otherwiſe diſpoſe of in ſuch manner as if the ſaid goods and chattels had actually been diſtrained by ſuch leſſor or landlord, leſſors or landlords in and upon ſuch premiſſes for ſuch arrears of rent; any law, cuſtom or uſage to the contrary in any wiſe notwithſtanding.

unleſs ſold to any perſon not privy to the fraud.

Sect. 2. "Provided always, That no landlord or leſſor, or other perſon intitled to ſuch arrears of rent, ſhall take or ſeize any ſuch goods or chattels as a diſtreſs for the ſame, which ſhall be ſold *bona fide*, and for a valuable conſideration, before ſuch ſeizure made, to any perſon or perſons not privy to ſuch fraud as aforeſaid; any thing herein contained to the contrary notwithſtanding.

Penalty on the ſaid fraud, or aſſiſting thereto.

Sect. 3. "And to deter tenants from ſuch fraudulent conveying away their goods and chattels, and others from wilfully aiding or aſſiſting therein, or concealing the ſame; Be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-fourth day of *June*, if any ſuch tenant or leſſee ſhall fraudulently remove and convey away his or her goods or chattels, as aforeſaid; or if any perſon or perſons ſhall wilfully and knowingly aid or aſſiſt any ſuch tenant or leſſee in ſuch fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the ſame; all and every perſon or perſons ſo offending ſhall forfeit and pay to the landlord or landlords, leſſor or leſſors, from whoſe eſtate ſuch goods and chattels were fraudulently carried off as aforeſaid, double the value of the goods by him, her or them reſpectively carried off or concealed as aforeſaid; to be recovered by action of debt in any of his majeſty's courts of record at *Weſtminſter*, or in the courts of ſeſſion in the counties palatine of *Cheſter*, *Lancaſter* or *Durham* reſpectively, or in the court of grand ſeſſions in *Wales*; wherein no eſſoign, protection or wager of law ſhall be allowed, nor more than one imparlance.

If the goods exceed not the value of 50 l. landlords to have recourſe to two juſtices.

Sect. 4. "Provided always, and be it enacted by the authority aforeſaid, That where the goods and chattels ſo fraudulently carried off or concealed ſhall not exceed the value of fifty pounds, it ſhall and may be lawful for the landlord or landlords, from whoſe eſtate ſuch goods or chattels were removed, his, her or their bailiff, ſervant or agent, in his, her or their behalf, to exhibit a complaint in writing againſt ſuch offender or offen-

offenders before two or more juſtices of the peace of the ſame county, riding or diviſion of ſuch county, reſiding near the place whence ſuch goods and chattels were removed, or near the place where the ſame were found, not being intereſted in the lands or tenements whence ſuch goods were removed; who may ſummon the parties concerned, examine the fact, and all proper witneſſes upon oath; or if any ſuch witneſſes be one of the people called *Quakers*, upon affirmation required by law; and in a ſummary way determine, whether ſuch perſon or perſons be guilty of the offence, with which he or they are charged; and to enquire in like manner of the value of the goods and chattels by him, her or them reſpectively ſo fraudulently carried off or concealed as aforeſaid; and, upon full proof of the offence, by order under their hands and ſeals, the ſaid juſtices of peace may and ſhall adjudge the offender or offenders to pay double the value of the ſaid goods and chattels to ſuch landlord or landlords, his, her or their bailiff, ſervant or agent, at ſuch time as the ſaid juſtices ſhall appoint: And in caſe the offender or offenders having notice of ſuch order, ſhall refuſe or neglect ſo to do, may and ſhall, by warrant under their hands and ſeals, levy the ſame by diſtreſs and ſale of the goods and chattels of the offender or offenders; and for want of ſuch diſtreſs may commit the offender or offenders to the houſe of correction, there to be kept to hard labour without bail or mainprize for the ſpace of ſix months, unleſs the money ſo ordered to be paid as aforeſaid ſhall be ſooner ſatisfied.

Appeal from them to the quarter ſeſſions.

Sect. 5. " Provided alſo, That it ſhall and may be lawful for any perſon, who thinks himſelf aggrieved by ſuch order of the ſaid two juſtices, to appeal to the juſtices of peace at their next general or quarter-ſeſſions to be held for the ſame county, riding or diviſion of ſuch county, who may and ſhall hear and determine ſuch appeal, and give ſuch coſts to either party as they ſhall think reaſonable, whoſe determination therein ſhall be final.

The 2 juſtices order, on ſuch appeal, not to be executed.

Sect. 6. " Provided alſo, That where the party appealing ſhall enter into a recognizance with one or two ſufficient ſurety or ſureties in double the ſum ſo ordered to be paid, with condition to appear at ſuch general or quarter-ſeſſions, the order of the ſaid two juſtices ſhall not be executed againſt him in the mean time.

Landlords may break open houſes to ſeize goods fraudulently ſecured therein;

Sect. 7. " And be it further enacted by the authority aforeſaid, That where any goods or chattels fraudulently or clandeſtinely conveyed or carried away by any tenant or tenants, leſſee or leſſees, his, her or their ſervant or ſervants, agent or agents, or other perſon or perſons aiding or aſſiſting therein, ſhall be put, placed or kept in any houſe, barn, ſtable, out-houſe, yard, cloſe or place locked up, faſtened or otherwiſe ſecured, ſo as to prevent ſuch goods or chattels from being taken and ſeized as a diſtreſs for arrears of rent; it ſhall and may be lawful for the landlord or landlords, leſſor or leſſors, his, her or their ſteward, bailiff, receiver or other perſon or perſons impowered, to take and ſeize, as a diſtreſs for rent, ſuch goods and chattels (firſt calling to his, her or their aſſiſtance the

conſtable, headborough, borſholder or other peace officer of the hundred, borough, pariſh, diſtrict or place where the ſame ſhall be ſuſpected to be concealed, who are hereby required to aid and aſſiſt therein; and in caſe of a dwelling houſe, oath being alſo firſt made before ſome juſtice of the peace of a reaſonable ground to ſuſpect that ſuch goods or chattels are therein) in the day-time, to break open and enter into ſuch houſe, barn, ſtable, out-houſe, yard, cloſe and place; and to take and ſeize ſuch goods and chattels for the ſaid arrears of rent, as he, ſhe or they might have done by virtue of this or any former act, if ſuch goods and chattels had been put in any open field or place.

and may diſtrain ſtock or cattle on the premiſſes, for arrears of rent.

Sect. 8. "And be it further enacted by the authority aforeſaid, That from and after the ſaid twenty-fourth day of *June*, which ſhall be in the year of our Lord one thouſand ſeven hundred and thirty-eight, it ſhall and may be lawful to and for every leſſor or landlord, leſſors or landlords, or his, her or their ſteward, bailiff, receiver or other perſon or perſons impowered by him, her or them, to take and ſeize, as a diſtreſs for arrears of rent, any cattle or ſtock of their reſpective tenant or tenants, feeding or depaſturing upon any common, appendant or appurtenant, or any ways belonging to all or any part of the premiſſes demiſed or holden; and alſo to take and ſeize all ſorts of corn and graſs, hops, roots, fruits, pulſe, or other product whatſoever, which ſhall be growing on any part of the eſtates ſo demiſed or holden, as a diſtreſs for arrears of rent; and the ſame to cut, gather, make, cure, carry and lay up, when ripe, in the barns or other proper place on the premiſſes ſo demiſed or holden; and in caſe there ſhall be no barn or proper place on the premiſſes ſo demiſed or holden, then in any other barn or proper place which ſuch leſſor or landlord, leſſors or landlords ſhall hire or otherwiſe procure for that purpoſe, and as near as may be to the premiſſes; and in convenient time to appraiſe, ſell, or otherwiſe diſpoſe of the ſame, towards ſatisfaction of the rent for which ſuch diſtreſs ſhall have been taken, and of the charges of ſuch diſtreſs, appraiſement and ſale, in the ſame manner as other goods and chattels may be ſeized, diſtrained and diſpoſed of; and the appraiſment thereof to be taken when cut, gathered, cured and made, and not before.

Tenants to have notice of the place where the diſtreſs is lodged.

Sect. 9. "Provided always, That notice of the place where the goods and chattels ſo diſtrained ſhall be lodged or depoſited, ſhall, within the ſpace of one week after the lodging or depoſiting thereof in ſuch place, be given to ſuch leſſee or tenant, or left at the laſt place of his or her abode; and that if after any diſtreſs for arrears of rent ſo taken, of corn, graſs, hops, roots, fruits, pulſe or other product which ſhall be growing as aforeſaid, at any time before the ſame ſhall be ripe and cut, cured or gathered, the tenant or leſſee, his or her executors, adminiſtrators or aſſigns, ſhall pay or cauſe to be paid to the leſſor or landlord, leſſors or landlords, for whom ſuch diſtreſs ſhall be taken, or to the ſteward or other perſon uſually employed to receive the rent of ſuch leſſor or leſſors, landlord or landlords, the whole rent which ſhall be then in arrear, together with

Diſtreſs of corn, &c. to ceaſe, if rent be paid before it be cut.

the full coſts and charges of making ſuch diſtreſs, and which ſhall have been occaſioned thereby; that then, and upon ſuch payment or lawful tender thereof actually made, whereby the end of ſuch diſtreſs will be fully anſwered, the ſame and every part thereof ſhall ceaſe; and the corn, graſs, hops, roots, fruits, pulſe or other product ſo diſtrained, ſhall be delivered up to the leſſee or tenant, his or her executors, adminiſtrators or aſſigns; any thing herein before contained to the contrary notwithſtanding.

Sect. 10. "And whereas great difficulties and inconveniencies frequently ariſe to landlords and leſſors, and other perſons taking diſtreſs for rent, in removing the goods and chattels or ſtock diſtrained off the premiſſes, in caſes where by law they may not be impounded and ſecured thereupon; and alſo to the tenants themſelves many times, by the damage unavoidably done to ſuch goods and chattels, or ſtock, in the removal thereof; Be it enacted by the authority aforeſaid, That, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and thirty-eight, it ſhall and may be lawful to and for any perſon or perſons lawfully taking any diſtreſs for any kind of rent, to impound or otherwiſe ſecure the diſtreſs ſo made, of what nature or kind ſoever it may be, in ſuch place or on ſuch part of the premiſſes chargeable with the rent, as ſhall be moſt fit and convenient for the impounding and ſecuring ſuch diſtreſs; and to appraiſe, ſell and diſpoſe of the ſame upon the premiſſes, in like manner and under the like directions and reſtraints to all intents and purpoſes, as any perſon taking a diſtreſs for rent may now do off the premiſſes, by virtue of an act made in the ſecond year of the reign of king *William* and queen *Mary*, intituled, *An act for enabling the ſale of goods diſtrained for rent, in caſe the rent be not paid in a reaſonable time*; or of another act made in the fourth year of his preſent majeſty, intituled, *An act for the more effectual preventing frauds committed by tenants, and for the more eaſy recovery of rents and renewal of leaſes*; and that it ſhall and may be lawful to and for any perſon or perſons whatſoever, to come and go to and from ſuch place or part of the ſaid premiſſes, where any diſtreſs for rent ſhall be impounded and ſecured as aforeſaid, in order to view, appraiſe and buy, and alſo in order to carry off or remove the ſame, on account of the purchaſer thereof; and that if any pound-breach or reſcous ſhall be made of any goods and chattels or ſtock diſtrained for rent, and impounded or otherwiſe ſecured by virtue of this act, the perſon or perſons aggrieved thereby ſhall have the like remedy as in caſes of pound-breach or reſcous is given and provided by the ſaid ſtatute.

Diſtreſſes may be ſecured, and ſold on the premiſſes.

Sect. 11. "And whereas the poſſeſſion of eſtates in lands, tenements and hereditaments is rendered very precarious by the frequent and fraudulent practice of tenants, in attorning to ſtrangers, who claim title to the eſtates of their reſpective landlord or landlords, leſſor or leſſors, who by that means are turned out of poſſeſſion of their reſpective eſtates, and put to the difficulty and expence of recovering the poſſeſſion thereof by actions or ſuits at law; for remedy thereof, Be it enacted by the autho-

Attornment of tenants void.

rity aforeſaid, That from and after the ſaid twenty-fourth day of *June* in the year of our Lord one thouſand ſeven hundred and thirty-eight, all and every ſuch attornment and attornments of any tenant or tenants of any meſſuages, lands, tenements or hereditaments, within that part of *Great Britain* called *England*, dominion of *Wales* or town of *Berwick* upon *Tweed*, ſhall be abſolutely null and void to all intents and purpoſes whatſoever; and the poſſeſſion of their reſpective landlord or landlords, leſſor or leſſors, ſhall not be deemed or conſtrued to be any wiſe changed, altered or affected by any ſuch attornment or attornments: Provided always, That nothing herein contained ſhall extend to vacate or affect any attornment made purſuant to and in conſequence of ſome judgment at law, or decree or order of a court of equity, or made with the privity and conſent of the landlord or landlords, leſſor or leſſors, or to any mortgagee after the mortgage is become forfeited.

Exception.

Sect. 12. " And whereas great inconveniencies have frequently happened to landlords by their tenants ſecreting declarations in ejectment, which have been delivered to them, or by refuſing to appear to ſuch ejectments, or to ſuffer their landlords to take upon them the defence thereof; Be it further enacted by the authority aforeſaid, That, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and thirty-eight, every tenant, to whom any declaration in ejectment ſhall be delivered for any lands, tenements or hereditaments, in that part of *Great Britain* called *England*, dominion of *Wales* or town of *Berwick* upon *Tweed*, ſhall forthwith give notice thereof to his or her landlord or landlords, or his, her or their bailiff or receiver, under the penalty of forfeiting the value of three years improved or rack rent of the premiſſes ſo demiſed or holden in the poſſeſſion of ſuch tenant, to the perſon of whom he or ſhe holds; to be recovered by action of debt to be brought in any of his majeſty's courts of record at *Weſtminſter*, or in the counties palatine of *Cheſter*, *Lancaſter* and *Durham*, reſpectively, or in the courts of grand-ſeſſions in *Wales*; wherein no eſſoign, protection or wager of law ſhall be allowed, nor any more than one imparlance.

Againſt tenants ſecreting ejectments.

Landlord impowered to make himſelf defendant by joining with the tenant, &c.

Sect. 13. " And be it further enacted by the authority aforeſaid, That it ſhall and may be lawful for the court where ſuch ejectment ſhall be brought, to ſuffer the landlord or landlords to make him, her or themſelves defendant or defendants, by joining with the tenant or tenants, to whom ſuch declaration in ejectment ſhall be delivered, in caſe he or they ſhall appear; but in caſe ſuch tenant or tenants ſhall refuſe or neglect to appear, judgment ſhall be ſigned againſt the caſual ejector for want of ſuch appearance; but if the landlord or landlords of any part of the lands, tenements or hereditaments, for which ſuch ejectment was brought, ſhall deſire to appear by himſelf or themſelves, and conſent to enter into the like rule that by the courſe of the court the tenant in poſſeſſion in caſe he or ſhe had appeared ought to have done; then the court where ſuch ejectment ſhall be brought ſhall and may permit ſuch landlord or landlords ſo to do, and order a ſtay of execution upon ſuch judgment againſt the caſual ejector, until they ſhall make further order therein.

Sect.

Sect. 14. " And to obviate ſome difficulties that many times occur in the recovery of rents, where the demiſes are not by deed, Be it further enacted by the authority aforeſaid, That, from and after the ſaid twenty-fourth day of *June*, it ſhall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reaſonable ſatisfaction for the lands, tenements or hereditaments, held or occupied by the defendant or defendants, in an action on the caſe, for the uſe and occupation of what was ſo held or enjoyed; and if in evidence on the trial of ſuch action any parol demiſe or any agreement (not being by deed) whereon a certain rent was reſerved ſhall appear, the plaintiff in ſuch action ſhall not therefore be nonſuited, but may make uſe thereof as an evidence of the *quantum* of the damages to be recovered.

Rents how to be recovered, where the demiſes are not by deed.

Sect. 15. " And whereas where any leſſor or landlord, having only an eſtate for life in the lands, tenements or hereditaments demiſed, happens to die before or on the day on which any rent is reſerved or made payable, ſuch rent, or any part thereof, is not by law recoverable by the executors or adminiſtrators of ſuch leſſor or landlord; nor is the perſon in reverſion entitled thereto, any other than for the uſe and occupation of ſuch lands, tenements or hereditaments, from the death of the tenant for life; of which advantage hath been often taken by the under-tenants, who thereby avoid paying any thing for the ſame; for remedy whereof, Be it enacted by the authority aforeſaid, That, from and after the twenty-fourth day of *June* one thouſand ſeven hundred and thirty-eight, where any tenant for life ſhall happen to die before or on the day on which any rent was reſerved or made payable upon any demiſe or leaſe of any lands, tenements or hereditaments, which determined on the death of ſuch tenant for life, that the executors or adminiſtrators of ſuch tenant for life ſhall and may in an action on the caſe recover of and from ſuch under-tenant or under-tenants of ſuch lands, tenements or hereditaments, if ſuch tenant for life die on the day on which the ſame was made payable, the whole, or if before ſuch day, then a proportion, of ſuch rent according to the time ſuch tenant for life lived of the laſt year, or quarter of a year, or other time in which the ſaid rent was growing due as aforeſaid, making all juſt allowances or a proportionable part thereof reſpectively.

Rents recoverable from under-tenant, where tenants for life die before the leaſe is expired.

Sect. 16. " And whereas landlords are often great ſufferers by tenants running away in arrear, and not only ſuffering the demiſed premiſſes to lie uncultivated without any diſtreſs thereon, whereby their landlords or leſſors might be ſatisfied for the rent-arrear, but alſo refuſing to deliver up the poſſeſſion of the demiſed Premiſſes, whereby the landlords are put to the expence and delay of recovering in ejectment: Be it further enacted by the authority aforeſaid, That, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and thirty-eight, if any tenant holding any lands, tenements or hereditaments, at a rack-rent, or where the rent reſerved ſhall be full three fourths of the yearly value of the demiſed premiſſes, who ſhall be in arrear for one year's rent, ſhall deſert the demiſed premiſſes, and leave the ſame uncultivated or unoccupied, ſo as

Proviſion for landlords, where tenants deſert the premiſſes.

no ſufficient diſtreſs can be had to countervail the arrears of rent; it ſhall and may be lawful to and for two or more juſtices of the peace of the county, riding, diviſion or place (having no intereſt in the demiſed premiſſes) at the requeſt of the leſſor or landlord, leſſors or landlords, or his, her or their bailiff or receiver, to go upon and view the ſame, and to affix or cauſe to be affixed, on the moſt notorious part of the premiſſes, notice in writing what day (at the diſtance of fourteen days at leaſt) they will return to take a ſecond view thereof; and if upon ſuch ſecond view the tenant, or ſome perſon on his or her behalf, ſhall not appear and pay the rent in arrear, or there ſhall not be ſufficient diſtreſs upon the premiſſes; then the ſaid juſtices may put the landlord or landlords, leſſor or leſſors, into the poſſeſſion of the ſaid demiſed premiſſes; and the leaſe thereof to ſuch tenant, as to any demiſe therein contained only, ſhall from thenceforth become void.

Tenants may appeal from the juſtices.

Sect. 17. "Provided always, That ſuch proceedings of the ſaid juſtices ſhall be examinable in a ſummary way by the next juſtice or juſtices of aſſize of the reſpective counties in which ſuch lands or premiſſes lie; and if they lie in the city of *London* or county of *Middleſex*, by the judges of the courts of *King's Bench* or *Common Pleas*; and if in the counties palatine of *Cheſter*, *Lancaſter* or *Durham*, then before the judges thereof; and if in *Wales*, then before the courts of grand-ſeſſions reſpectively; who are hereby reſpectively impowered to order reſtitution to be made to ſuch tenant, together with his or her expences and coſts, to be paid by the leſſor or landlord, leſſors or landlords, if they ſhall ſee cauſe for the ſame; and in caſe they ſhall affirm the act of the ſaid juſtices, to award coſts not exceeding five pounds for the frivolous appeal.

Sect. 18. "And whereas great inconveniencies have happened and may happen to landlords whoſe tenants have power to determine their leaſes, by giving notice to quit the premiſſes by them holden, and yet refuſing to deliver up the poſſeſſion when the landlord hath agreed with another tenant for the ſame; Be it further enacted by the authority aforeſaid, That, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and thirty-eight, in caſe any tenant or tenants ſhall give notice of his, her or their intention to quit the premiſſes by him, her or them holden, at a time mentioned in ſuch notice, and ſhall not accordingly deliver up the poſſeſſion thereof at the time in ſuch notice contained; that then the ſaid tenant or tenants, his, her or their executors or adminiſtrators ſhall from thenceforward pay to the landlord or landlords, leſſor or leſſors, double the rent or ſum which he, ſhe or they ſhould otherwiſe have paid; to be levied, ſued for and recovered at the ſame times and in the ſame manner, as the ſingle rent or ſum before the giving ſuch notice could be levied, ſued for or recovered; and ſuch double rent or ſum ſhall continue to be paid during all the time ſuch tenant or tenants ſhall continue in poſſeſſion as aforeſaid.

Tenants holding premiſſes after the time they notify for quitting them, to pay double rent for ſuch time.

Sect. 19. "And whereas it hath ſometimes happened, that upon any diſtreſs made for rent juſtly due, the directions of the ſtatute made in the

ſecond

ſecond year of the reign of king *William* and queen *Mary*, intituled, *An act for enabling the ſale of goods diſtrained for rent, in caſe the rent be not paid in a reaſonable time*, have not been ſtrictly purſued, but through the miſtake or inadvertency of the landlord or other perſon entituled to ſuch rent and diſtraining for the ſame, or of the bailiff or agent of ſuch landlord or other perſon, ſome irregularity or tortious act hath been afterwards done in the diſpoſition of the diſtreſs ſo ſeized or taken, as aforeſaid; for which irregularity or tortious act the party diſtraining hath been deemed a treſpaſſer *ab initio*, and an action brought againſt him as ſuch, the plaintiff hath been intitled to recover, and has actually recovered, the full value of the rent, for which ſuch diſtreſs was taken: And whereas it is a very great hardſhip upon landlords and other perſons intitled to rents, that a diſtreſs duly made ſhould be thus in effect avoided for any ſubſequent irregularity; Be it enacted by the authority aforeſaid, That, from and after the ſaid twenty-fourth day of *June* in the year of our Lord one thouſand ſeven hundred and thirty-eight, where any diſtreſs ſhall be made for any kind of rent juſtly due, and any irregularity or unlawful act ſhall be afterwards done by the party or parties diſtraining, or by his, her or their agents; the diſtreſs itſelf ſhall not be therefore deemed to be unlawful, nor the party or parties making it to be deemed a treſpaſſer or treſpaſſers *ab initio*; but the party or parties aggrieved by ſuch unlawful act or irregularity ſhall or may recover full ſatisfaction for the ſpecial damage he, ſhe or they ſhall have ſuſtained thereby, and no more, in an action of treſpaſs, or on the caſe, at the election of the plaintiff or plaintiffs: Provided always, That where the plaintiff or plaintiffs ſhall recover in ſuch action, he, ſhe or they ſhall be paid his, her or their full coſts of ſuit, and have all the like remedies for the ſame as in other caſes of coſts.

Diſtreſſes for rent not unlawful, &c. for any irregularity in the diſpoſition of them;

Sect. 20. "Provided nevertheleſs, That no tenant or tenants, leſſee or leſſees, ſhall recover in any action for any ſuch unlawful act of irregularity as aforeſaid, if tender of amends hath been made by the party or parties diſtraining, his, her or their agent or agents, before ſuch action brought.

nor tenants to recover by action, on tender of amends.

Sect. 21. "And be it further enacted by the authority aforeſaid, That, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and thirty-eight, in all actions of treſpaſs or upon the caſe to be brought againſt any perſon or perſons intitled to rents or ſervices of any kind, his, her or their bailiff or receiver, or other perſon or perſons, relating to any entry by virtue of this act, or otherwiſe, upon the premiſſes chargeable with ſuch rents or ſervices, or to any diſtreſs or ſeizure, ſale or diſpoſal of any goods or chattels thereupon; it ſhall and may be lawful to and for the defendant or defendants in ſuch actions to plead the general iſſue, and give the ſpecial matter in evidence; any law or uſage to the contrary notwithſtanding: and in caſe the plaintiff or plaintiffs in ſuch action ſhall become nonſuit, diſcontinue his, her or their action, or have judgment againſt him, her or them, the defendant or defendants ſhall recover double coſts of ſuit.

In actions againſt Perſons intitled to rents, the Defendants may plead the general iſſue, &c.

Sect. 22. "And whereas great difficulties often ariſe in making avowries or conuzance upon diſtreſſes for rent, quit-rents, reliefs, heriots, and

Defendants in replevin to make conuzance, that the plaintiff held the premiſſes at a certain rent, &c.

other ſervices; Be it further enacted by the authority aforeſaid, That, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and thirty-eight, it ſhall and may be lawful to and for all defendants in replevin to avow or make conuzance generally, that the plaintiff in replevin, or other tenant of the lands and tenements whereon ſuch diſtreſs was made, enjoyed the ſame under a grant or demiſe at ſuch a certain rent, during the time wherein the rent diſtrained for incurred, which rent was then and ſtill remains due; or that the place where the diſtreſs was taken was parcel of ſuch certain tenements, held of ſuch honor, lordſhip or manor, for which tenements the rent, relief, heriot or other ſervice diſtrained for, was at the time of ſuch diſtreſs and ſtill remains due; without further ſetting forth the grant, tenure, demiſe or title of ſuch landlord or landlords, leſſor or leſſors, owner or owners of ſuch manor; any law or uſage to the contrary notwithſtanding: And if the plaintiff or plaintiffs in ſuch action ſhall become nonſuit, diſcontinue his, her or their action, or have judgment given againſt him, her or them, the defendant or defendants in ſuch replevin ſhall recover double coſts of ſuit.

To prevent vexatious replevins.

Sect. 23. "And to prevent vexatious replevins of diſtreſſes taken for rent, Be it enacted by the authority aforeſaid, That, from and after the ſaid twenty-fourth day of *June* one thouſand ſeven hundred and thirty-eight, all ſheriffs and other officers having authority to grant replevins, may and ſhall, in every replevin of a diſtreſs for rent, take, in their own names, from the plaintiff, and two reſponſible perſons as ſureties, a bond in double the value of the goods diſtrained (ſuch value to be aſcertained by the oath of one or more credible witneſs or witneſſes not intereſted in the goods or diſtreſs; which oath the perſon granting ſuch replevin is hereby authorized and required to adminiſter) and conditioned for proſecuting the ſuit with effect and without delay, and for duly returning the goods and chattels diſtrained in caſe a return ſhall be awarded, before any deliverance be made of the diſtreſs; and that ſuch ſheriff, or other officer as aforeſaid, taking any ſuch bond, ſhall at the requeſt and coſts of the avowant or perſon making conuzance aſſign ſuch bond to the avowant or perſon aforeſaid, by indorſing the ſame, and atteſting it under his hand and ſeal in the preſence of two or more credible witneſſes; which may be done without any ſtamp, provided the aſſignment ſo indorſed be duly ſtamped before any action brought thereupon; and if the bond ſo taken and aſſigned be forfeited, the avowant or perſon making conuzance may bring an action and recover thereupon in his own name; and the court where ſuch action ſhall be brought may by a rule of the ſame court give ſuch relief to the parties upon ſuch bond as may be agreeable to juſtice and reaſon; and ſuch rule ſhall have the nature and effect of a defeazance to ſuch bond."

Stat. 27 *Geo.* 2. *c.* 20. [*A. D.* 1754. *Intituled*] "An act for the more eaſy and effectual proceeding upon diſtreſſes to be made by warrants of juſtices of the peace."

"Whereas by many acts of parliament, juſtices of the peace are impowered to iſſue warrants for the diſtreſs and ſale of goods and chattels,

but the charges of diſtraining, keeping and ſale of ſuch goods and chattels are not provided for in all the ſaid acts, nor is there a time in all caſes limited for the ſale thereof, whereby inconveniencies have ariſen: Therefore for remedy thereof, Be it enacted by the king's moſt excellent majeſty, by and with the advice and conſent of the lords ſpiritual and temporal, and commons, in this preſent parliament aſſembled, and by the authority of the ſame, That in all caſes where any juſtice or juſtices of the peace, is or are, or ſhall be required or impowered by any act or acts of parliament now in force, or hereafter to be made, to iſſue a warrant of diſtreſs for the levying of any penalty inflicted, or any ſum of money directed to be paid, by or in conſequence of ſuch act or acts, it ſhall and may be lawful for the juſtice or juſtices granting ſuch warrant, therein to order and direct the goods and chattels ſo to be diſtrained, to be ſold and diſpoſed of within a certain time to be limited in ſuch warrant, ſo as ſuch time be not leſs than four days, nor more than eight days, unleſs the penalty or ſum of money for which ſuch diſtreſs ſhall be made, together with the reaſonable charges of taking and keeping ſuch diſtreſs, be ſooner paid.

Juſtices to limit in their warrants of diſtreſs the time for ſale of the diſtreſs,

not leſs than 4, nor more than 8 days.

Sect. 2. "And be it further enacted, That the officer making ſuch diſtreſs ſhall and is hereby impowered to deduct the reaſonable charges of taking, keeping and ſelling ſuch diſtreſs, out of the money ariſing by ſuch ſale; and the overplus (if any) after ſuch charges, and alſo the ſaid penalty or ſum of money ſhall be fully ſatisfied and paid, ſhall be returned on demand to the owner of the goods and chattels ſo diſtrained; and the officer executing ſuch warrant, if required, ſhall ſhew the ſame to the perſon whoſe goods and chattels are diſtrained, and ſhall ſuffer a copy thereof to be taken.

Officer to deduct the charges of keeping and ſelling, Overplus to be returned.

Sect. 3. "Provided always, That nothing herein contained ſhall extend, or be conſtrued to extend, to alter or repeal any of the proviſions or directions relating to diſtreſſes to be made for the payment of tithes and church rates, by the people called *Quakers*, contained in an act paſſed in the ſeventh and eighth years of his late majeſty king *William* the Third, intituled, *An act that the ſolemn affirmation and declaration of the people called* Quakers *ſhall be accepted inſtead of an oath, in the uſual form*; or in one other act paſſed in the firſt year of his late majeſty king *George* the Firſt, intituled, *An act for making perpetual an act of the ſeventh and eighth years of the reign of his late majeſty king* William *the Third, intituled,* An act that the ſolemn affirmation and declaration of the people called *Quakers* ſhall be accepted inſtead of an oath in the uſual form; *and for explaining and enforcing the ſaid act in relation to the payment of tithes and church rates; and for appointing the form of an affirmation to be taken by the ſaid people called* Quakers, *inſtead of the oath of abjuration.*

Proviſions relating to tithes in 7 & 8 Will. 3. c. 34. and 1 Geo. c. 6. not altered.

Mr. *Norton* ſhewed cauſe againſt quaſhing an order of two juſtices, and an order of ſeſſions confirming it, made in purſuance of the act of 2 *Geo.* 2. *c.* 19. § 3. (for the more effectual ſecuring the payment of rents, and preventing frauds by tenants) againſt one *Thomas Middlehurſt*, for wilfully and knowingly aiding or aſſiſting *John Cheſterton*, the tenant of Sir *Thomas Fleetwood*, in fraudulently removing and conveying away five cows, *&c.* or in concealing the ſame. Mr. *Gould*, who had moved

Order on act 11 Geo. 2. c. 19. ſect. 3. 1 Bur. Rep. 399. Trin. 30 & 31 Geo. 2. Rex v. Middlehurſt.

moved to quaſh this order, founded his motion upon two objections; *viz.* 1ſt objection. The whole adjudication refers to the complaint of one *Thomas Weſton*; wherein there is no charge upon *Cheſterton*, the tenant, at all; nor upon the defendant *Middlehurſt*, for aiding and aſſiſting him: neither is it ſtated "that *Cheſterton*, the tenant, did remove the goods." 2d objection. The act creates two offences, *viz.* aſſiſting in removing, and aſſiſting in concealing the goods. Now it is not ſpecifically charged upon the defendant *Midlehurſt*, that he wilfully and knowingly did either one of theſe two things: It is only alledged that he wilfully and knowingly did one or the other. In 1 *Salk.* 371. *Rex* v. *Stocker*, an indictment for forging, or cauſing to be forged, was holden ill; becauſe the charge was in the disjunctive. 2 *Hawk. P. C.* 225. § 60. An indictment charging a man disjunctively, is void; for the offences are diſtinct; and it appears not of which of them the defendant is accuſed. So here, it does not appear which of the two offences the juſtices have convicted him of. And 2 Lord *Raym.* 1265. *Queen* v. *Baines*, proves that the court will make no intendment againſt the defendant. Upon which objections he obtained a rule to ſhew cauſe "why the order ſhould not be quaſhed." And now Mr. *Norton* ſhewed the following cauſe againſt quaſhing it. As to the firſt objection, "That it is not deſcribed ſufficiently "what the offence is;" he anſwered, that this is an order; and the court will not intend it to be ill. To prove which, he cited *Rex* v. *Biſſex*, *Tr.* 29 *Geo.* 2. *B. R.* As to the 2d. The charge being in the disjunctive, "That he "wilfully and knowingly aided and aſſiſted the tenant in removing the "goods, or in concealing the ſame." He ſaid, The crime and the puniſhment are the ſame upon both: And the defendant was heard. Mr. *Gould* for the defendant replied, 1ſt, It is not at all ſtated "That the tenant did "remove the goods. 2dly, The aiding and aſſiſting in removing, is a different offence from aiding and aſſiſting in concealing: And here it is only charged in the alternative.

Lord *Mansfield*.——Upon indictments it has been ſo determined, "That "an alternative charge is not good;" as "forged or cauſed to be forged:" though one only need be proved, if laid conjunctively, (as "forged and cauſed to be forged.") But I don't ſee the reaſon of it: the ſubſtance is exactly the ſame; the defendant muſt come prepared againſt both; and it makes no difference to him in any reſpect. But this is an order; and being good in ſubſtance, needs not be literally ſo ſtrict. Mr. Juſtice *Deniſon* thought alſo that the caſes upon indictments are very nice. But this is not an indictment, but an order; and therefore being good in ſubſtance, needs not be ſo ſtrict in form as an indictment muſt be. And either aiding or aſſiſting in removing, or aiding or aſſiſting in concealing, is equally an offence: and theſe are the very words of the act. 'Tis only form, and does not at all vary the puniſhment. I am not therefore inclined to the ſame ſtrictneſs as was obſerved in the caſe of *The King* v. *Stocker*, in 1 *Salk.* 371. *Per Cur.* rule diſcharged; and conſequently both orders affirmed.

Order

Order made by two juſtices, reciting that a complaint had been made to them by *A. Clavey* againſt *J. Biſſex*; that he the ſaid *Clavey* demiſed his eſtate in the pariſh of *Shelley* in the county of *Somerſet*, to *William Thatcher*, at the yearly rent of 44 *l.* and that there was due and in arrear from *Thatcher* to him for rent of the ſaid eſtate, on the 5th day of *April* laſt, 24 *l.* 15 *s.* 8½ *d.* and that he the ſaid *Clavey* would have diſtrained the goods and chattels of the ſaid *William Thatcher* upon the ſaid eſtate, in order to obtain ſatisfaction of the ſaid rent; but to prevent him from ſo doing, the ſaid *Biſſex*, on or about the 27th, 28th or 29th days of *Auguſt* laſt, did knowingly and wilfully aid and aſſiſt the ſaid *Thatcher* in fraudulently conveying and carrying off from the ſaid eſtate his the ſaid *Thatcher*'s goods and chattels, and alſo in concealing the ſame, being under the value of 50 *l.* that is to ſay, two cows, one heifer, and ten hundred weight of cheeſe, of the value of 20 *l.* whereby the ſaid *Clavey* was prevented from diſtraining the ſame, in order to obtain ſatisfaction for the ſaid rent, and contrary to the ſtatute 11 *Geo.* 2. and therefore praying us to grant him our warrant of ſummons, requiring you the ſaid *J. Biſſex* to appear before us, and that we would examine the fact, and thereupon make ſuch order therein for his relief as the ſaid ſtatute directs and requires, and as ſhould be agreeable to juſtice. Whereupon we the ſaid juſtices, reſiding near the ſaid eſtate from whence the ſaid goods and cattle were removed, and neither of us any way intereſted in the ſaid eſtate, did iſſue our warrant of ſummons, requiring you the ſaid *J. Biſſex* to attend us thereon to anſwer the ſaid complaint; and you having attended accordingly, and we in your preſence having examined the witneſſes produced by the ſaid *A. Clavey* upon oath, and heard what was alledged by you in your defence, do adjudge that the ſaid complaint is true; and that the ſaid goods and cattle of the ſaid *W. Thatcher*, in which you ſo aided and aſſiſted in conveying and carrying off from the ſaid eſtate, and alſo in concealing the ſame, were of the value of 20 *l.* and that you have thereby forfeited double of the value of the ſaid goods and cattle, being the ſum of 40 *l.* to the ſaid complainant *A. Clavey*, by virtue of the ſaid ſtatute. We therefore, in purſuance of the ſaid ſtatute, do adjudge, order and require you the ſaid *J. Biſſex*, within the ſpace of three days from the date hereof, to pay to the ſaid *A. Clavey* the ſum of 40 *l.* which if you ſhall neglect to do, ſuch further proceedings will be then had againſt you to inforce the payment thereof as the ſaid ſtatute directs and requires. Given under our hands and ſeals this 5th day of *January* 1756. This order was affirmed by the ſeſſions upon appeal. Both the orders were removed by *certiorari* into the *King's Bench*. It was moved to quaſh the ſame. Objections taken: 1. The complaint is ſaid to be taken in writing, but not upon oath. 2. It is only ſaid, that he demiſed to *W. Thatcher*; but not ſaid for what eſtate or term. 3. It is ſtated, ſo much was due for rent, but not ſaid for what term: it might be due twenty years ago. It is not ſtated to be due, when *Thatcher* removed his goods. 4. The words of the order are, goods and *cattle*; of the ſtatute goods and *chattels*. 5. No

Order of two juſtices on the ſtatute 11 Geo. 2. c. 9. 1 Burn's Juſt. 423 Trin. 29 & 30 Geo 2. King v. Biſſex.

certain time is alledged when the defendant aided and aſſiſted; only ſaid, on or about the 26th, 27th or 28th of *Auguſt.* 6. Not ſtated that *Thatcher* did carry off his goods: only that *Biſſex* did aid and aſſiſt him in carrying them off. 7. They adjudge the complaint true, but do not ſtate the evidence: and this is a conviction, not an order: and for any thing that appears, it might be upon *Clavey*'s evidence alone. 8. It is not ſtated that the goods were under the value of 50 *l.* which is the ground of the juſtices juriſdiction. 9. The words of the ſtatute are, If any perſon ſhall be a tenant of any lands, tenements or hereditaments: The word uſed in the order is *eſtate*; which may be a thing incorporeal, or may mean the intereſt in the land, and ſo not within the ſtatute. It ſhould appear, whether the landlord has a right to diſtrain. By the 8 *Ann. c.* 14. the landlord may diſtrain at any time within ſix months after the expiration of the term: it doth not appear theſe ſix months were not expired; and if they were, this is no offence. After conſideration, Mr. Juſtice *Deniſon* delivered the reſolution of the court. I think the moſt material objection is, whether this is an order or a conviction. If a conviction, the evidence ought to have been ſet out. And there has been no doubt (notwithſtanding the caſe of *K.* and *Pulleine*, 1 *Salk.* 369.) that in a conviction the evidence muſt be ſet out, that the court may judge upon it. So it was held by Lord *Hardwicke* in the caſe of *K.* and *Lloyd*, *Str.* 996. and in that caſe it was objected, that as it ſubjected the party to a penalty, though in the ſtatute it was called an order, yet it ſhould be conſtrued as a conviction: but the court ſaid, every act of the juſtices, which ſubjects the party to a penalty, ſhall not be conſtrued as a conviction. *K.* and *Venables*, *Str.* 630. 2 L. *Raym.* 1406. upon the ſtatute for licenſing alehouſes, conſidered as an order. *K.* and *Blackwell*, *Mich.* 4 *Geo.* which the court ſaid was a ſtrong caſe, and muſt be conſidered as an order. I underſtood from my Lord *Hardwicke* in the caſe of *K.* and *Lloyd*, that his ground of the difference was founded upon the expreſſions of the ſtatute, and not upon the penalty; as where the words of a ſtatute are "of which he ſhall be convicted," it is to be conſtrued as a conviction. Here it is extremely ſtrong; the ſtatute calls it an order; and in the nature of it, it is an examination upon a complaint. If the party was never ſummoned, this court upon affidavit will grant an information againſt the juſtices; but the ſummons need not be ſet out; and the court will intend the juſtices have done right, in caſe the contrary does not appear upon the face of the order. As to the firſt objection: This is not an information, but a complaint: when the party is ſummoned, the witneſſes are to be examined upon oath, but the complaint need not be upon oath. In anſwer to the ſecond objection: As the order has followed the words of the ſtatute, we will not intend it a caſe wherein the juſtices had not a juriſdiction. The court will not, in caſe of an order, intend that the juſtices have done wrong. As to the 3d objection: It is ſufficiently alledged in an order; his aſſiſting the tenant to carry away the goods, as it is here alledged, is ſufficient to ſhew the rent continued then to be in arrear, and the rather as the defen-

dant might have availed himſelf of the rent paid, by proving it before the juſtices. I much doubt; whether in a declaration it would not be ſufficient to ſay, the rent was in arrear at ſuch a day; and I think it would lie upon the defendant to prove that the rent does not remain in arrear. As to its not being ſaid, for what time the rent was due; this is mere matter of form. As to the fifth objection: *About*, in common parlance, means in this caſe three days or near it. They might be three days in carrying the goods away. The days are not material, even in legal proceedings. 1 L. *Raym.* 581. And in the caſe of *K.* and *Simpſon*, *H.* 3 *Geo. Str.* 46. the day and hour in a conviction are not material. By this ſtatute no time is limited when the complaint ſhall be made: it may be made at any time. Suppoſe the defendant had paid the penalty on a different complaint made, he might eaſily have ſhewn it. As to the 6th: The anſwer is obvious; if *Thatcher* had not carried his goods away, the defendant could not have aided in carrying them. The ſtatute makes two offences; one, carrying the goods away; the other, aiding in carrying them away. It is only neceſſary here to ſtate the offence which the defendant had been guilty of, which this order does in the words of the ſtatute. In the caſe of *K.* and *Monk*, *M.* 13 *Geo.* 2. there was a conviction for aiding and aſſiſting in killing a buck. It was objected, that it was not charged the buck was killed. But the court held, that as the conviction was in the words of the ſtatute, it was ſufficient. And the court held they were all principals, as well thoſe that killed the buck, as thoſe that aſſiſted. And this was the caſe of a conviction.——All the other objections may have this general anſwer; that in the caſe of orders, where the juſtices have juriſdiction, we will intend they have acted right; and if they have done wrong, they may be puniſhed by an information.———Let the orders be confirmed.

Tenant in tail is within the act 11 Geo. 2. c. 19. §. 15. (See page 771) 1 Burn's Juſt. 437. Dec. 4. 1753. In the caſe of *Pagget* and *Lee*.

Tenant in tail, remainder to the defendant in fee, leaſes for years, and dies without iſſue a week before the day of payment of the half year's rent. The leſſee, at the day, pays all the half year's rent to the defendant. The executor of the tenant in tail brings his bill for apportionment of the rent. ——By the lord chancellor *Hardwicke:* This point has never been determined; but this is ſo ſtrong a caſe, that I ſhall make it a precedent. There are in it two grounds for relief in equity. The firſt ariſes on the ſtatute of 11 *G.* 2. The ſecond ariſes on the tenant's having ſubmitted to pay the rent to the defendant. The relief ariſing upon the ſtatute, is, either from the ſtrict legal conſtruction, or equity formed upon the reaſon of it. And here it is proper to conſider, what the miſchief was before the act, and what remedy is provided at common law. If tenant for life, or any who had a determinable eſtate, died but a day before the rent reſerved on a leaſe of his became due, the rent was loſt. For no one was intitled to recover it. His repreſentatives could not; becauſe they could only bring action for the uſe and occupation; and that would not lie where there was a leaſe, but debt or covenant. Nor could the remainderman; becauſe it did not accrue in his time. Now this act appoints the apportioning the rent, and gives the remedy. But there are two deſcrip-

tions of the perſon, to whoſe executors the remedy is given. In the preamble, it is one having only an eſtate for life. In the enacting part, it is, tenant for life. Now tenant in tail comes expreſsly within the miſchief. I do not know how the judges at common law would conſtrue it, but I ſhould be inclined in this court to extend it to them. I ſhould make no doubt, were this the caſe of tenant in tail after poſſibility of iſſue extinct; for he is conſidered in many reſpects as tenant for life only. He cannot ſuffer a recovery. He may be injoined from committing waſte, being conſidered as to that as tenant in tail. Were it the caſe of tenant for years determinable on lives, he certainly muſt be included within the act, tho' it ſays only tenant for life. It would be playing with the words to ſay otherwiſe. Theſe caſes ſhew the neceſſity of conſtruing this act beyond the words.

Tenant in tail has certainly a larger eſtate than a mere tenant for life; for he has the inheritance in him, and may when he pleaſes turn it into a fee: but if he does not; at the inſtant of his death he has but an intereſt for life. Such too is the caſe of a wife tenant in tail *ex proviſione mariti*. Upon this point I give no abſolute opinion. As to the equity ariſing from this ſtatute, I know no better rule than this, *æquitas ſequitur legem*. Where equity finds a rule of law agreeable to conſcience, it purſues the ſenſe of it to analogous caſes. If it does ſo as to maxims of the common law, why not as to the reaſons of acts of parliament? Nay, it has actually done ſo, on the ſtatute of forcible entry, upon which, this court grounds bills, not only to remove the force, but to quiet the poſſeſſion. That act requires a legal eſtate in poſſeſſion. This court extends the reaſon to equitable intereſts. But I ground my opinion in this caſe, upon the tenant's having ſubmitted to pay the rent. He has held himſelf bound in conſcience to pay it, for the uſe and occupation of the land the laſt half year. He paid it to the defendant, which he was not bound to do in law. And in ſuch a caſe, the perſon he pays it to ſhall be accountable, and conſidered as receiving it for thoſe who are in equity intitled to it. The diviſion muſt be that preſcribed by the ſtatute; and then the plaintiff is intitled to ſuch a proportion of the rent as accrued during the teſtator's life. And accordingly it was decreed.

What things may be diſtrained for a poor-rate, &c. 1 Bur. Rep. 579. Eaſt. 31 Geo. 2. Friday 20th April 1758. *Hutchins* v. *Chambers et al.*

This was a ſpecial caſe from *Surry* aſſizes, before Ld. Ch. J. *Willes*. It was an action of treſpaſs againſt the juſtices of peace, the pariſh officers, the conſtables, and their aſſiſtants; for executing a warrant of diſtreſs made by theſe two juſtices, upon a poor-rate amounting to 13 l. 2 s. and a verdict was found for the plaintiff, againſt all the defendants, ſubject to the opinion of the court, upon the whole matter. The diſtreſs at firſt taken, was 5 geldings, ſtated to be beaſts of the plough and cart; with their halters. Which firſt diſtreſs not being ſufficient, they diſtrained a ſecond time, under the ſame warrant; and took 3 other geldings, which were and are ſtated to have been alſo beaſts of the plough and carr, of the value of 36 l. 17 s. with their halters. It is expreſsly ſtated, "That upon the former

former diſtreſs, there were other goods, *&c.* more than ſufficient to anſwer the value of the demand, beſides theſe beaſts of the plough and cart. This caſe was firſt argued on *Tueſday* the 31ſt of *January* 1758, by Mr. *Knowler* for the plaintiff, and Mr *Gould* for the defendants; and again, on *Friday* the 14th of *April* 1758, by Mr. *Stowe* for the plaintiff, and Mr. *Williams* for the defendants. There were 5 queſtions ſtated for the opinion of the court, *viz.* 1ſt, Whether the rate and aſſeſſment was a good and ſufficient rate and aſſeſſment, in point of law: and if not, then whether the plaintiff can avail himſelf of any objection to it. 2d Queſtion, Whether the warrant ought to have fixed and limited the time within which the geldings and goods diſtrained were to be ſold: and whether for want thereof, the warrant is void, and the defendants, or any, or which of them, are treſpaſſers. 3d Queſtion, Whether the ſecond diſtreſs is at all juſtifiable. 4th Queſtion, Whether the geldings, being beaſts of the plough, and uſed by the plaintiff, both for the plough and cart, were liable to be taken and diſtrained for the ſaid rate and aſſeſſment. 5th Queſtion, Whether, upon the whole ſtate of the caſe, the plaintiff's action is maintainable againſt the defendants, or any, and which of them. And a 6th queſtion, Whether the ſecond diſtreſs was not exceſſive, aroſe upon the argument.

After the firſt argument, (in which, the diſtreſs was treated as a common-law diſtreſs; and Mr. *Knowler* expreſsly denied it to be an execution, becauſe it was repleviable; and inſiſted that the ſtatute *de diſtrictione ſcaccarii* is general, is declaratory of the common law, and extends to all diſtreſſes for any cauſe whatſoever;) lord *Mansfield*, finding that the parties propoſed ſpeaking to it again, took notice that all about the rates is clearly out of the preſent caſe: for if they are bad, the parties who thought themſelves aggrieved, ſhould have appealed. So all about the warrants may be laid out of the caſe. For the warrant is not void, ſo as to make it a treſpaſs *ab initio.* Therefore the future argument may be confined to the other objections. *Ulterius concilium.*

Mr. *Stowe*, who argued for the plaintiff, on *Friday* the 14th of *April* 1758, paſſed over 1ſt and 2d queſtions, upon what the court had intimated after the former argument; and proceeded directly to the 3d queſtion. It is ſtated that here was ſufficient diſtreſs, the firſt time: and therefore the ſecond was not juſtifiable. *Co. Lit.* 272. *b.* *Cro. Eliz. B.* *Moor* 7. 2 *Lutw.* 1532. *Wallis* v. *Savill.* *Fitz. H. N. B.* title *Recaption.* 8 *Co.* 50. *John Webb*'s caſe. And this is a duty of a leſs nature than rent: and yet even in that caſe, a double diſtreſs is unlawful. A ſecond reaſon why the ſecond diſtreſs was not good nor juſtifiable, is, becauſe the warrant is not an authority to take it: for, the warrant having been once executed, had performed its office; and conſequently was no more than a piece of waſte paper, at the time of taking the ſecond diſtreſs. 4th Queſtion, Beaſts of the plough (though uſed both for plough and cart) cannot be diſtrained for a rate, when there are other goods ſufficient. 51 *H.* 3. *ſtat.* 4. *De diſtrictione ſcaccarii.* "None ſhall be diſtrained by his beaſts that gaigne his land, nor by his ſheep, *&c.*" 2 *Inſt.* 133. is large and expreſs, "That this

this was ſo by the common and civil law; and that this ſtatute extends to all ſorts of diſtreſſes whatſoever; alſo to all manner of executions, as well at the ſuit of the king, as of the ſubject." *Dyer* 312.

The words *levy the debt* cannot be applicable merely to lord and tenant; but are general, and extend to all diſtreſſes whatſoever. 1 *Inſt.* 289. *b.* 2 *Inſt.* 133. 6th Queſtion, Whether the ſecond diſtreſs is not exceſſive. He argued that this diſtreſs was exceſſive; being a diſtreſs taken of 3 geldings, of triple the value: for the value was 36 l. 17 s. and the ſum diſtrained for, only one-third (or very little more) of that ſum, *viz.* 13 l. 2 s. which is exceſſive upon the face of it. And he cited 1 *Rol. Abr.* 674. where inſtances are given of diſtreſſes exceſſive upon the face of them. 1 *Inſt.* 107. And this diſtreſs is not an *entire* diſtreſs: but a diſtreſs of 3 diſtinct things. And an exceſſive diſtreſs of ſeveral diſtinct things is not maintainable: and an action of treſpaſs will lie for it. *H.* 28 *G.* 2. *Moir* v. *Munday et al'*, which was a diſtreſs of a great quantity of pedlar's goods (of the value of 100 l.) which might have been ſevered; for only 6 s. 8 d. Therefore both the firſt and ſecond diſtreſs are illegal. Wherefore he prayed judgment for the plaintiff.

Mr. *Williams* contra, for the defendants. He confined himſelf to theſe three queſtions, *viz.* Firſt, Whether under the ſtatute of 43 *Eliz.* *Averia carucæ* can be diſtrained for the poor's rate, where there is other ſufficient diſtreſs. 2dly, Whether under the warrant for levying the ſum aſſeſſed, a ſecond diſtreſs can be made; where the firſt is ſufficient, and a ſufficient diſtreſs might have been taken in the firſt inſtance. 3dly, If a ſecond diſtreſs can be made; Whether the ſecond diſtreſs is not exceſſive, and whether, on that account, this action can be maintained. And he obſerved, that the two juſtices are not concerned in theſe preſent queſtions, now remaining before the court. He obſerved likewiſe, that the firſt diſtreſs being a treſpaſs or not, depended entirely upon the firſt of his three queſtions; and the ſecond diſtreſs's being a treſpaſs or not, depended entirely upon the two laſt of them; and all the three queſtions depended principally upon the ſtatute of 43 *Eliz.* He begun with his own firſt queſtion, (which was the 4th original queſtion:) and he firſt conſidered the nature of the duty created by the 43 of *Elizabeth*, and then the nature of the remedy thereby given for the recovery of that duty. The duty is not a tax upon the land, nor payable out of it; but a charge upon the perſon: and it is a tax throughout the kingdom, and for public benefit. This is not to be conſidered upon the foot of a common law diſtreſs: the nature, deſign, and end of this public duty required the moſt effectual and ſpeedy remedy that could be deviſed. The reaſon why the beaſts of the plough could not be diſtrained at common law, will not hold in the preſent caſe. This is ſimilar to an execution, and eſſentially different from a diſtreſs at common law. At common law the diſtreſs could not be ſold: It was only taken *nomine pœnæ*, not as a ſatisfaction, (which is this,) for the duty. The reaſons of the privilege do not now hold. Agriculture then wanted and required encouragement, and muſt have

have been impeded by a common law diſtreſs. Now, it does not. Then, the thing diſtrained could not be ſold; and remained uſeleſs: Now, it may be ſold. The debt, there, was of a private nature: this here, is of a public nature. This diſtreſs is not taken as a pledge, or as a mean to compel, but for a ſatisfaction for the duty itſelf, a perſonal duty, and of a public nature. 1 Ld. *Raym.* 386. *Vinkenſterne* v. *Ebden.* Sir *T. Raym.* 232. *Prideaux* v. *Warne.* 2 *Lev.* 96. *S. C. Cro. Eliz.* 710. *Smith* v. *Shepheard*, proves that the rule is not applicable to diſtreſſes for ſuch duties. They are preſcriptions for toll-through: and the firſt and laſt are inſtances of ſheep, *&c.* taken for tolls.

As to the ſtatute *de Diſtrictione Scaccarii:* Comparing that ſtatute with the ſtatute of *Articuli ſuper Chartas*, 28 *Ed.* 1. *c.* 12. (which refers to the ſtat. *de Diſtrictione Scaccarii)* and attending to the words of it, it can never be taken to extend to ſuch caſes as the preſent; to parliamentary remedies, at that time unknown. It is confined to ſuch diſtreſſes as could be ſold; to caſes of the grantees of the crown, or where the prerogative of the crown was concerned. The miſchief, at that time, was the unbounded power of the prerogative in diſtreſſes, and the great abuſe and oppreſſion exerciſed by the king's bailiffs and by lords of liberties. The king, by his prerogative at the common law, might take the land, as well as the goods and chattels, in execution; (Sir *William Herbert*'s caſe, 3 *Co.* 12.) conſequently, the beaſts of the plough. And though ſheep are expreſsly mentioned in that act, yet ſheep may be diſtrained for toll; which proves "that this act does not extend to all diſtreſſes." *Cro. Eliz.* 710. is ſo, *Smith* v. *Shepheard.* Where ſheep were taken for a toll of 2 *d.* for every twenty ſheep; and no ſort of objection, "that ſheep were not diſtrainable." Beſides, the act of 43 *Eliz. cap.* 2. is an implied repeal of the ſtat. *de Diſtrictione Scaccarii.* Another anſwer to this act is, That if they would have availed themſelves of it, a ſpecial action ought to have been brought upon this particular ſtatute. *Regiſter* 97. *b. & F. N. B.* 89. *& F. N. B.* 90. are particular forms of writs upon it. So, upon the ſtat of *Marlbridge*, *c.* 4. (which prohibits unreaſonable diſtreſſes) treſpaſs will not lie for an unreaſonable diſtreſs: But the remedy muſt be by a ſpecial action founded on the ſtatute. In 2 *Strange* 851. *Lynne* v. *Moody*, it was adjudged "that treſpaſs will not lie for taking an exceſſive diſtreſs: "But the remedy ought to be by ſpecial action founded on the ſtatute of "*Marlbridge.*" And on the ſame ſtatute, "That diſtreſſes taken in one "county ſhall not be driven into another," there are writs formed. *Regiſter* 97. *F. N. B.* 82. But treſpaſs will not lie: It muſt be a ſpecial action. 3 *Lev.* 48. *Woodcroft* v. *Thompſon.* The three judges held (againſt *North*) "That he that would take advantage of the ſtatute of *Marlbridge*, "*c.* 4. and 1 *&* 2 *P. & M. c.* 12. ought to do it by way of action, *&c.*" Their argument would prove too much: For ſheep were privileged by the common law; and by the ſtat. *de Diſtrictione Scaccarii*, expreſsly, "No man ſhall be diſtrained by, *&c.*—nor by his ſheep." But ſheep are now allowed to be diſtrainable for a poor's rate. So are the other things mentioned by Lord *Coke* (from the *Mirrour*) in his 2 *Inſt.* 133. as not diſtrainable at common law, if there were other goods ſufficient.

All

All theſe are ſurely diſtrainable for this rate. 1 Ld. *Raym.* 386. *Raym.* 232. and 2 *Lev.* 96. *S. C. Cro. Eliz.* 710. Therefore the 43 of *Eliz.* is not confined to common law diſtreſſes. But theſe beaſts are ſtated to be "beaſts of the plough and cart." Therefore they are diſtrainable: For beaſts of the cart are not privileged. 1 *Sid.* 422, 440. *Welch* v. *Bell.* 2 *Keb.* 595. *S. C. Bract. lib.* 4. 217. *b.* ſpeaks of oxen as beaſts of the plough. However, this is an execution; and therefore none of the arguments relative to the diſtreſſes can be applied to this caſe. When goods are ſeized in execution on a *Fieri facias*, the debt is diſcharged. So is 2 Ld. *Raym.* 1072. *Clerk* v. *Withers.* This is a diſtreſs for a ſatisfaction of the demand; not for a pain, or penalty or pledge. Conſequently it is an execution. This is the eſſential difference between an execution and a diſtreſs at common law.

In the caſe of *Rex* v. *Speed.* Caſes *temp. W.* 3. 328. A *Levari facias* out of *B. R.* after affirmance of a conviction for deer-ſtealing, was holden regular: and it was conſidered as an execution; for *per Holt*, "When "a ſtatute ſays money ſhall be levied by diſtreſs, this is an execution." Therefore, it being an execution, beaſts of the plough might have been taken. And ſo they may here, this being an execution. What has been urged on the other ſide, from 2 *Inſt.* 133. "That the ſtatute *de Diſtrictione Scaccarii* "extends to all diſtreſſes whatſoever, and likewiſe to executions," is one of the very few miſtakes of that excellent writer. And this opinion of Lord *Coke* is not only contrary to common experience; but alſo to the opinion of Lord Chief Juſtice *Holt*, in *Comberb.* 356. *Hardiſty* v. *Barney*; where *Holt* ſaid, "That upon a *Fieri facias* the ſheriff may take any thing "but wearing cloaths: nay, if the party has two gowns, he may take "one of them." And ſheep are notoriouſly diſtrainable now: and yet they are expreſly and by name, within the ſtat. *de Diſtrictione Scaccarii.* The ſtat. of *Weſtm.* 2. *c.* 18. which gives the *elegit*, expreſsly excepts beaſts of the plough. At that time the legiſlature thought ſuch exception neceſſary. And *Dyer* 7. *b. pl.* 10. ſays, That a man ſhall not have execution of the profits of a filazer's office; becauſe he cannot grant and aſſign it. So that the true rule ſeems, from that caſe, to be, "that whatever may be aſſigned by the party, may be taken in execution, *et e contra.*" The doctrine on which theſe gentlemen build their arguments, is now obſolete, and unknown to the generality of mankind: and it would be very inconvenient to re-eſtabliſh it. And this diſtreſs is for the benefit of the debtor, as theſe things are moſt ſaleable; and of no prejudice to any body. And no caſe is cited on the part of the plaintiff. In 3 *Salk.* 136. it is ſaid to have been adjudged "that the rule of common law, to ex-"empt, *&c.* extends to caſes where a diſtreſs is given in the nature of "an execution, by any particular ſtatute, as for poor rates, *&c.*" But perhaps this is no authority to be relied on. As to the next queſtion: I agrree to 2 *Lutw.* 1532. "That a ſecond diſtreſs can not be taken for "the remainder of the ſame rent, where the firſt diſtreſs was only for "parcel of the whole rent due." But in this preſent caſe, if the officer "is deceived in the value of the firſt diſtreſs, he may take a ſecond: So

if the firſt dies in the pound, (*Dyer* 280. *b. pl.* 14.) or is by accident become ineffectual; or if the officer did not know that there were ſuch other goods); which laſt might be the preſent caſe: Theſe cannot be looked upon as two diſtinct diſtreſſes for one entire demand. But if this be conſidered as an execution, then there can be no doubt about it. For the ſheriff may, in ſuch caſe, re-enter before the return of his writ, to complete his execution. And this laſt reaſon equally anſwers the objection to the warrant: for that is not completed and finiſhed till the whole demand is levied. 6th Queſtion. As to the exceſſiveneſs of the ſecond diſtreſs, He did not much contend that it was not ſo: but he inſiſted that an action of treſpaſs will not lie for taking an exceſſive diſtreſs. For proof of which, he relied on the caſe of *Lynn* v. *Moody*, 2 *Strange* 851. and the caſe in 3 *Lev.* 48. *Woodcroft* v. *Thompſon*. The declaration contains two counts; one for each treſpaſs: and the damages are given jointly for both. Therefore it is incumbent upon the plaintiff, to ſhew that both theſe diſtreſſes are illegal.

Mr. *Stowe* in reply: The caſes of tolls are not applicable to the preſent caſe. Agriculture deſerves encouragement now, as well as formerly. I ſuppoſe the king's diſtreſs might be ſold at common law: therefore the act *de Diſtrictione Scaccarii* does not extend to executions. And the 43 of *Eliz.* has not repealed it. Theſe beaſts are privileged, if there be ſufficient beſides: and here was ſufficient beſides. Beaſts of cart are within the ſame reaſon, as beaſts of plough: they *gaignont ſon terre*, as the ſtatute of 51 *H.* 3. ſays. The arguments of obſoleteneſs and ignorance will not hold: for the former is not true; and the latter will not excuſe. 'Tis no part of the caſe, "That they did not at firſt know the value." And it is begging the queſtion to ſay "That he may take a ſecond diſ-"treſs, when the firſt was not ſufficient." That is the very thing that wants to be proved. As to the caſe of *Lynne* v. *Moody:* The entry there was at firſt lawful; and there was nothing ſubſequent to make that lawful entry a treſpaſs. But here, the ſecond entry to take the ſecond diſtreſs, was tortious: and therefore they are liable to an action. So that that determination does not affect the preſent caſe. *Cur. adviſ.*

This cauſe now ſtanding in the paper, for the reſolution of the court, Lord *Mansfield* delivered their opinion. The rule of *Niſi prius* is ſo conceived as to ſubmit the caſe to the opinion of the court, be that whatever it may; and ſo as to obviate all objections to the form of the pleadings and finding of the verdict. In ſtating the caſe, he obſerved that there were other things which might have been taken upon the firſt diſtreſs, beſides thoſe which were actually diſtrained: but not upon the ſecond (from any thing that appears.) Upon the firſt argument, the two firſt objections were laid out of the queſtion; eſpecially ſince the 17 *Geo.* 2. *c.* 38. So that the juſtices were out of the caſe. For a defect in the rate (unappealed from) could not avoid the warrant, nor is the warrant void, ſo as to make it a treſpaſs *ab initio:* and the juſtices could not be treſpaſſers, by what the officers afterwards did.

So that it was reduced to three queſtions: *Viz.* 1ſt, Whether (upon the firſt diſtreſs) *Averia Carucæ* could be taken and diſtrained for a poor's rate and aſſeſſment; when there were other things that might have been diſtrained, and which were more than ſufficient to anſwer the value of the demand. The 2d queſtion turned upon two objections to the ſecond diſtreſs; *viz.* 1ſt, Whether the ſecond diſtreſs, under the ſame warrant, was at all juſtifiable, when there was enough that might have been taken upon the firſt; and 2dly, Whether this ſecond diſtreſs, being exceſſive, that circumſtance alone was not a ſufficient ground to maintain this action of treſpaſs, independant of any other conſideration. On the ſecond argument, Mr. *Williams* not only argued very well as counſel for this client; but he explained the whole learning of diſtreſſes at common law; which were a *Nomine pœnæ*, not a ſatisfaction: and as I adopt the reaſoning of his argument throughout, to avoid repetition now, I will in a great meaſure refer to it for the grounds of the opinion which the court is of. The firſt queſtion is, "Whether *Averia Carucæ* may be taken for a diſtreſs "upon the poor's rate, where there are other diſtrainable goods ſufficient." As to this, the ſolid diſtinction is, "That the ſeizing under the 43 of *Eliz.* and ſuch like acts of parliament, is but partly analogous to the common law diſtreſs, (as being repleviable, *&c.*) but is much more analogous to the common law execution; (like a *Fieri facias*, where the ſurplus, after ſale, ſhall be returned.) In the old common law diſtreſſes, which were in the nature of a *Nomine pœnæ* to compel payment, it would have been abſurd to have ſuffered the implements by which a man gained his livelihood to be holden as a pledge: becauſe that would have been taking from the man the only means he had of being able to pay the debt. But this reaſon don't hold where the things diſtrained may immediately be ſold by way of ſatisfaction; which, though called a diſtreſs, yet really is in this reſpect an execution. The adjudication ſaid to have been made in *M.* 8 *W.* 3. *C. B.* in 3 *Salk.* 136. was very properly cited by Mr. *Williams*, as no ſufficient authority, and not (of itſelf) to be relied upon: But I take it that the ſame reaſon was gone upon, in the caſe of 1 Ld. *Raym.* 386. *Vinkenſtern* v. *Ebdon*, *M.* 10 *W.* 3. *B. R.* where lord chief juſtice *Holt* ſays, "It is true, a horſe cannot be diſtrained in a ſmith's ſhop, *&c.* but there is no ſuch reſtriction, where the diſtreſs is for a perſonal duty." And he obſerved, that the duty, in that caſe, aroſe out of the goods laden to be exported: ſo that by their being laden, the duty commenced, and the ſhip became chargeable; and, *à fortiori*, any part of her. I take the meaning of what he there ſays of perſonal duties, to be applicable to the caſe of parliamentary duties alluded to in 3 *Salkeld*, and conſequently to be agreeable to 3 *Salk.* 136. which ſays, it was adjudged "that this common law exemption of utenſils, tools, inſtruments of huſbandry, *&c.* from diſtreſs, holds only in diſtreſſes for rent arrear, amerciaments, *&c.* but doth not extend to caſes where a diſtreſs is given in the nature of an execution, by any particular ſtatute; (as for poor rates, *&c.*") Therefore it is more analagous to an execution than to a diſtreſs at common law: and there, (in caſes of execution) *averia carucæ* may be diſtrained; although there be other ſufficient diſtreſs.

And

And on this ground we are all of opinion, that there is no objection to the firſt diſtreſs, from the *averia carucæ* being taken: for that they are diſtrainable under the 43 *Eliz.* and ſuch like acts of parliament. Thus far, you ſee, relates only to the firſt diſtreſs. As to the ſecond diſtreſs,—The firſt queſtion relating to that, is, "whether this ſecond diſtreſs can be at all juſtified, as it was a ſecond diſtreſs taken under the ſame warrant, when enough might have been taken at firſt, if the diſtrainer had then thought proper:" Now, a man who has an entire duty, ſhall not ſplit the entire ſum, and diſtrain for parr of it at one time, and for another part of it at another time; and ſo *toties quoties* for ſeveral times; for that is great oppreſſion. And that is the caſe of *Wallis* v. *Savill et al'* in 2 *Lutw.* 1532. where the ſecond diſtreſs was holden juſtifiable, becauſe both diſtreſſes were taken for one and the ſame rent; and it was the leſſor's folly that he had not taken a ſufficient diſtreſs at firſt. But if a man ſeizes for the whole ſum that is due to him, and only miſtakes the value of the goods ſeized, (which may be of very uncertain, or even imaginary ſale, as pictures, jewels, race-horſes, *&c.*) there is no reaſon why he ſhould not afterwards complete his execution by making a further ſeizure. And how can the officer who ſeizes judge of the real or perhaps imaginary value of the horſes or goods ſeized? The value of them may be quite unknown to him, or may even depend upon whim and fancy. It is to the advantage of the defendant that this ſhould be ſo: It is better for him that the officer ſhould be at liberty to ſeize a ſecond time, in caſe he makes an inſufficient ſeizure the firſt time; or elſe it might induce him to a neceſſity of taking effects of a very great value at firſt; for if he is to be precluded from thus making up the deficiency, he will certainly take care not to take too little at firſt. Now, pictures, horſes, jewels, books, and ſome other ſuch effects, may be of ſo uncertain and even imaginary or fancied value, that it may be exceedingly uncertain how much money they may fetch when they come to be ſold; ſo that the perſon ſeizing may not be at all able to judge how much they may produce upon Sale; and if he does not take the value of the whole at firſt, (out of tenderneſs and moderation perhaps) there is no reaſon why he ſhould not complete it by a ſecond ſeizure, provided it be for the ſame ſum due. Therefore this firſt objection to the ſecond diſtreſs fails. 3d queſtion, The ſecond objection to this ſecond diſtreſs, is the third remaining queſtion; *viz.* Its being exceſſive, and as ſuch being a ſufficient ground for an action of treſpaſs. Now, as to this third queſtion. "Whether the taking an exceſſive diſtreſs, is a ſufficient ground to maintain an action of treſpaſs." Several authorities have been cited, to that "that an action of treſpaſs will not lie for taking an exceſſive diſtreſs;" but "that it ought to be a particular action grounded upon the ſtatute:" and particularly, one caſe, which is in 2 *Strange* 851. *Lynne* v. *Moody*, *M.* 3 *G.* 2. *B. R.* where it had been ſo adjudged in *C. B.* but the judgment of *C. B.* was there reverſed; and it was ſaid "that the remedy ought to be by ſpecial action" founded on the ſtatute of *Marlbridge*. So that it has been ſuffi-

ciently eſtabliſhed " that a general action of treſpaſs cannot be maintained for taking an exceſſive diſtreſs." One caſe indeed was cited to the contrary, which was the caſe of *Moir* v. *Munday*, *H.* 28 *G.* 2. *B. R.* and that was an action of treſpaſs; where 6 ounces of gold, and 100 ounces of ſilver were taken for 6 s. 8 d. which was holden to be an exceſſive diſtreſs; and judgment was given for the plaintiff. But that appeared upon the face of it, and upon the pleadings, to be exceſſive: and ſo the court expreſsly declared. And it was a diſtreſs of gold and ſilver; which are of a certain known value; and even the meaſure of the value of other things. And it was there holden, " that in all other caſes of goods or other things of arbitrary and uncertain value, it muſt be an action upon the ſtatute." But this (as I am told) was the diſtinction there taken: and that is therefore an exception (and was there conſidered as being ſo) from the general rule; and ſerves to confirm the rule itſelf. We are therefore all of us of opinion that there is no cauſe of action maintainable by the plaintiff in the preſent caſe, nor has he any right to recover againſt any of the defendants; and that the defendants be at liberty to enter a non-ſuit. The rule taken was, that the *poſtea* be delivered to, and judgment entered for the defendants.

End of the First Volume.

ADVERTISEMENT.

THE title page to the firſt volume of this work, with a collection of the rules that have been laid down in the ſeveral volumes of the Reports and by the moſt authentic Law Writers, for the true conſtruction and interpretation of Acts of Parliament, illuſtrated by the caſes on which thoſe rules have been founded, and a complete index to this volume, will be publiſhed ſome time next month.

INDEX to and TABLE

OF THE

PRINCIPAL MATTERS in VOL. I.

ABJURATION Oath. See Oaths.
Acceſſary. See Principal and Acceſſary.
Action popular. See Information.

Addition.

What it is ——— page 1
To be made to all names in writs, by the ſtat. 1 Hen. 5. c. 5. and a commentary on that ſtatute, 2, 6
Advertiſement. See Stamps.
Adultery. See Lewdneſs.

Affray.

What is an affray ——— — 6, 7
By ſtat. 2 Ed. 3. c. 3. no man ſhall come before the juſtices, or go or ride armed; and a commentary on that ſtatute ——— 7, 8
How far an affray may be ſuppreſſed by a private perſon ——— ——— 9
How far by a conſtable ——— ib.
In what manner an affray may be ſuppreſſed by a juſtice of peace ——— 10
How affrays may be puniſhed ——— 10, 11
Alamodes. See Silks.
Ale and Beer. See Exciſe.

Alehouſes.

By ſtat. 19 Hen. 7. c. 12. two juſtices were impowered to ſuppreſs alehouſes ——— 12
By ſtat. 5 & 6 Ed. 6. c. 25. none ſhall ſell ale or beer without licence, and they ſhall be bound by recognizance——Juſtice of peace may diſcharge common ſelling of ale and beer—Recognizance with ſurety by thoſe who do keep alehouſes. —— 12 d. for making the recognizance, which muſt be certified at the next quarter ſeſſions —— 12
Inquiry to be made concerning thoſe who have forfeited their recognizance—— Keeping alehouſes how puniſhed——Certificate of the recognizance and offence at the quarter-ſeſſions——Proviſo for towns where fairs are kept ——— 13
Stat. 1 Jac. 1. c. 9. The true and principal uſe of inns and alehouſes—Alehouſe-keeper permitting unlawful drinking how puniſhed——Prices of ale and beer ſold in an alehouſe ——— 14
Penalty of conſtables and churchwardens omitting their duty——Offence committed within univerſities ——— ——— 15
Stat. 4 Jac. 1. c. 4. In what caſe ale or beer may be ſold to an alehouſe-keeper having no licence—In what courts offences ſhall be heard and determined 16
Poor's half of the forfeitures ſhall be delivered to the overſeers—Penalty for not diſtributing money received to the poor ——— 17
Stat. 4 Jac. 1. c. 5. Drunkenneſs foundation of many other ſins, and cauſe of ſeveral enormities 17
Penalty on him who is convicted of drunkenneſs—— On inferior officer neglecting to do his duty——For tipling in an alehouſe —— 18
What officers ſhall enquire of and puniſh the offences committed againſt this ſtatute, and the ſtat. 1 Jac. 1. c. 9.——He that is the ſecond time convicted of drunkenneſs ſhall be bound to his good behaviour—What officers ſhall prevent the offences aforeſaid—No reſtraint of eccleſiaſtical juriſdictions——Only one puniſhment for one offence——Liberties of univerſities ſhall not be prejudiced 19
Within what time offender ſhall be preſented 20
Stat. 7 Jac. 1. c. 10. Penalty for an offence committed againſt ſtat. 4 Jac. 1. c. 5. ib.
Stat. 21 Jac. 1. c. 7. One witneſs ſhall be ſufficient to convict a man of tipling and drunkeneſs ib
Oath of him who confeſſeth the offence ſhall be ſufficient proof againſt any other——Penalty on tipling——He that is convicted of drunkenneſs ſhall forfeit 5 s.—for ſecond offence to be bound to the good behaviour—Alehouſekeeper offending to be diſabled from keeping an alehouſe three years after——Conſtables to preſent offences committed againſt 1 Jac. 1. c. 9. ——— 21

INDEX.

Stat. 1 Car. 1. c. 4. Foreigners as well as inhabitants ſhall not be permitted to tipple in inns, alehouſes, &c.——Vintners and victuallers to be within this and the other ſtatutes ——— 22

Stat. 3 Car. 1. c. 3. Puniſhment of him that keeps an alehouſe without licence — 23

Conſtables or churchwardens ſhall levy the ſaid forfeiture to the uſe of the poor——Officer neglecting to puniſh the offender ſhall be impriſoned or pay 40 s —for 2d and 3d offence, offender to be committed to the houſe of correction—Alehouſes kept in time of fairs excepted ——— 24, 25

Stat. 2 Geo. 2. c. 28. No licence to keep inns or alehouſes but at general meeting of the juſtices 25

Stat 26 Geo. 2. c. 13. Juſtices being brewers, innkeepers, diſtillers, victuallers or malſters, &c. prohibited from granting licences for ſelling ale, &c. 25, 26

Stat. 26 Geo. 2. c. 31. Juſtices licenſing alehouſes, &c. to take recognizance in the ſum of 10 l. for the maintenance of good order, and to ſend the recognizances to the clerk of the peace, on penalty of 3 l. 6 s. 8 d. ——— 26

Licences to be granted to none not licenſed the year preceding, unleſs ſuch as ſhall produce certificates of their good fame—Licenſed perſon dying or removing, the ſucceſſor, upon obtaining ſuch certificate, may keep on the houſe for the reſidue of the term of the licence, &c.——Licences to be granted on 1ſt of September, or twenty days after, and the ſame to be made but for one year; notice to be given of the time and place for granting them — — 27

Clerks of the peace to deliver copies of the recognizances to the juſtices at their general meetings for granting licences yearly———Recovery of the forfeitures for granting licences without taking a recognizance——Where a juſtice ſhall adjudge the recognizance to be forfeited, he is to ſummon the party to the quarter ſeſſions, &c.——And the jury finding him guilty, the recognizance is to be eſtreated, and he is diſabled from ſelling beer, &c. for three years 28, 29

Juſtices may adjourn the trial to next ſeſſions——— Where a juſtice ſhall ſuſpect that any victualler ſells ale, &c. without licence, he may ſummon him, and the officer who ſurveys him, and examine ſuch officer upon oath.—Juſtice upon information that any perſon is reaſonably ſuſpected of ſelling ale, &c. without licence, is to ſummon the party and evidence —Perſons ſummoned not appearing, forfeit 10 l. — 29

Perſons diſabled by conviction to ſell ale, &c. diſabled alſo from ſelling ſpirituous liquors, &c.—— Penalty of ſelling ale, &c. without a licence from two juſtices; to be levied by diſtreſs and ſale; one moiety to the informer, and the other to the poor; for want of diſtreſs, the perſon to be committed— Conviction to be certified to the next quarter ſeſſions, and filed ——— 30

Form of conviction——Offender not liable to double puniſhment for the ſame offence—Rights of the univerſities to grant licences reſerved—The times of granting licences for common inns, not altered, &c.——Inhabitant of the pariſh deemed a competent witneſs — — 31

Statute 28 Geo. 2. c. 19. Offenders, after third conviction, to forfeit 6 l. for every offence 31, 32

Stat. 29 Geo 2. c. 13. On death or removal of perſons occupying licenſed houſes, their aſſigns, &c. may continue the ſame for the reſidue of the year 32

Stat. 5 Geo. 3. c. 46. Retailers of beer and other exciſeable liquors, to exhibit, on demand, their licence to the officer appointed by the commiſſioners for ſtamps, and to permit him to take a copy thereof; on forfeiture of 40 s. — 32, 33

Clerks of the peace, and common clerks, or their deputies, are to deliver, upon demand, to the officer of the ſtamp duties, liſts of the ſeveral perſons licenſed to retail beer or other exciſeable liquors, he paying for every ſuch copy 1 farthing for each licenſed perſon inſerted in ſuch liſt. If ſuch liſt ſhall be refuſed or delayed, or be given in imperfect, the offender forfeits 5 l. ——— 33, 34

Inſtead of the pecuniary and corporal puniſhments inflicted by former acts, on retailers of beer, &c. not being duly licenſed, they are to forfeit, for the firſt offence, 40 s. and coſts of conviction; and on non-payment, are to be committed for one month; for the ſecond offence, 4 l. and coſts; and, on non-payment, to be committed for two months; for the third offence 6 l. and coſts; and on non-payment, to be committed for three months; and the like penalty and puniſhment as the third, for every ſubſequent offence—The coſts are to be ſettled by the juſtices; and the penalties to be applied, one moiety to the crown, and the other moiety and coſts to the proſecutor—The juſtices are authorized to hear and determine the ſaid offences in a ſummary way —— 34, 35

Witneſſes being duly ſummoned, neglecting or refuſing to appear (without reaſonable cauſe ſhewn) or to give evidence, forfeit 20 s.——Perſons aggrieved by the judgment or conviction of a juſtice, and giving ſecurity, may appeal to the quarter-ſeſſions, who are to hear and determine the matter finally; and if they adjudge the appeal to be frivolous or vexatious, may award coſts, not exceeding 5 l. ——— 36

Form of conviction.——An indictment doth not lie for keeping an alehouſe without licence 37, 38

A houſe for boarders and lodgers, for themſelves and horſes, is not an inn nor alehouſe 39

The juſtices in ſeſſions have a diſcretionary power of ſuppreſſing alehouſes, without ſhewing any cauſe or miſdemeanor.———Juſtices may take away licence without conviction upon the recognizance— Mandamus lies not to grant a licence to keep an alehouſe ——— 40

Infor-

Information was denied againſt juſtices of peace, for refuſing to grant a licence under 26 Geo. 2. c. 31. becauſe the juſtices of the diviſion have the ſole diſcretion, without appeal, and they acted with purity of intention; but if they exerciſe this abſolute diſcretion with partiality, malice or corruption, an information ſhall be granted 41, 42, 43, 44
Information againſt a juſtice of peace, upon a charge of his refuſal to grant a licence to ſell ale, unleſs the man would firſt pay him a collateral and diſputed debt, and then convicting him of ſelling ale unlicenſed, without any previous ſummons, was denied upon the merits; but the juſtices have no authority to annex ſuch conditions; and the complainant ought to alledge his own innocence, to intitle him to make this application againſt the juſtice —— —— 45, 46
See Brewers, Coopers, Exciſe, Fees, Inns, and Inn-keepers, Meaſures, Plate, Soldiers, Stamps, Wine.
Almanacks. See Stamps.

Annuities.

What is an annuity—Stat. 4 Will. & M. c. 3. ſ. 46. —Stat. 5 Will. & M. c. 5. Certificate of nominee's life——Penalty on perjury, and forging of Certificate —— —— 46, 47
Stat. 2 & 3 Ann. 3. Contributors to produce a certificate of the life of nominees, &c. ſigned by the miniſter and churchwardens without fee; otherwiſe to make oath of nominee's life— Juſtices to make a certificate thereof, &c. Penalty on perſon guilty of a falſe oath, or forging certificate, &c. 48
Stat. 4 Ann. c. 6. Annuities aſſignable, and entry to be made, &c. —— ib.
Stat. 5 Ann. c. 19. Contributors paying, &c. to enjoy ſure eſtates in annuities purchaſed 49
Stat. 6 Ann. c. 5. Annuities aſſignable, &c. ib.
Stat. 30 Geo. 2. c. 19. On demanding the annuity, certificate from the miniſter and churchwardens to be produced of the life of the nominee, if reſident in England; or the ſame to be certified, on oath, before a juſtice —— 50
Penalty of forging or counterfeiting certificates, &c. or of fraudulently receiving annuities 51
Stat. 9 Geo. 1. c. 12. 4 Geo. 2. c. 9. 9 Geo. 2. c. 34. Counterfeiting orders felony without clergy 51, 52
Apothecary. See Phyſicians.

Appeal.

What is appeal —— 52, 53
Who may have an appeal of death 53
When, where, and in what manner an appeal of death muſt be proſecuted —— 53
Where an appeal of death may be abated 54
Puniſhment for falſe appeal —— 55

Apples and Pears.

Stat. 1 Ann. ſt. 1. c. 15. Water meaſure deſcribed 56
Fruit ſold by water meaſure ſhall be heaped—Not to extend to ſealed meaſures allowed by the fruiterers company of London —— 57

Apprentices.

Definition of apprentice —— 57
Stat. 5 Eliz. c. 4. Huſbandmen may take apprentices —Every houſeholder dwelling in any town corporate may take an apprentice for ſeven years—— Merchants, &c. may take no apprentices, but ſuch whoſe parents may diſpend 40 s. of freehold—— Whom they may have for their apprentices who dwell in market towns not corporate 58
What apprentices merchants, &c. dwelling in a market town not corporate, may take.——Theſe artificers may take apprentices whoſe parents may diſpend no land.——None may uſe any manual occupation except he hath been apprentice to the ſame —— 59
A proviſo for the liberties of worſted makers in Norwich and Norfolk——The puniſhment of him that refuſeth to be an apprentice—The remedy for the apprentice which is miſuſed by his maſter, and for the maſter when the apprentice doth not his duty —— 60
Where an apprentice may be diſcharged of his apprenticehood—None ſhall be bound to be apprentices, but thoſe which be under twenty-one years of age—Aſſembly of the juſtices twice in the year for the due execution of this ſtatute——The juſtices allowances for their pains 60, 61
Who ſhall have the forfeitures mentioned in this ſtatute——Juſtices of peace, mayor, &c. may hear and determine all offences committed againſt this ſtatute, 31 Eliz. c 5.——A proviſo for the cities of London and Norwich ——The forfeiture of him that taketh an apprentice otherwiſe than is limited by this ſtatute——He that is bound apprentice within the age of twenty-one years is compellable to ſerve —— 62, 63
Proviſo for the inhabitants of Godalming in Surrey—Who ſhall have the forfeitures in cities and towns corporate——A remedy for thoſe ſervants which depart from their maſters, and do flee into other ſhires —— 63
An infant apprentice muſt be bound by indenture—Perſon bound apprentice by deed, &c. though not indented, being firſt duly ſtamped, is intitled to a ſettlement where apprenticed —— 64
Stat. 6 & 7 Will. 3. c. 17. Apprentice diſcovering perſon guilty of clipping the coin ſhall be free 64, 65
Stat. 3 Geo. 3. c. 8. Officers, mariners, ſoldiers, and marines, who have been at any time employed in the king's ſervice ſince 29 Novemb. 1748, and have not ſince deſerted, and alſo the wives and children of ſuch, are authoriſed to ſet up and exerciſe trades within any part of Great Britain or Ireland, without lett; and without being liable to be removed from thence to their laſt legal place of ſettlement, until they become actually chargeable

to the pariſh; and if ſued, upon pleading the general iſſue, they ſhall be acquitted, and be paid double coſts of ſuit——Where any two juſtices for the county or place where they ſhall ſo ſet up, ſummon them to give evidence as to the place of their laſt legal ſettlement, they ſhall make oath accordingly; an atteſted copy whereof ſhall be given them, which ſhall be admitted as evidence at the quarter ſeſſions; and if ſummoned again they ſhall not be obliged to take a freſh oath, but produce the former, or leave a copy thereof 65, 66

Privileges of the two univerſities reſerved——The art of a brewer is an art, myſtery, and manual occupation within the ſaid branches of the act 67

Exerciſing a trade by others is within the ſtatute 5 Eliz. —— 68

Indict. for exerciſing the trade of a fellmonger contrary to 5 Eliz. not quaſhed, becauſe averred to be a trade at the time of making the act——Where the trade is averred to be a trade at the time of the act, the court cannot intend it within the act——A perſon who is not qualified to exerciſe a trade himſelf, by having ſerved an apprenticeſhip, entering into partnerſhip with a qualified partner, and only ſharing the profits and ſtanding the riſque of the partnerſhip, without ever exerciſing or interfering in the trade himſelf perſonally, is not within the prohibitory penal act of 5 Eliz. c. 4. ſo as to be liable to the penalties of it 69, 70, 71, 72, 73

Indictment for exerciſing the occupation of a tanner, not having ſerved an apprenticeſhip for ſeven years therein, is ſufficient without ſpecifying and averring the want of other qualifications allowed by ſubſequent ſtatutes, for ſuch other qualifications or exceptions ought to be ſhewn by the defendant 73, 74

Indictment for uſing a trade uſed in Great Britain at the time of the ſtat. 3 Eliz. quaſhed——What ſhall be ſaid to be a good indictment for exerciſing a trade without having ſerved an apprenticeſhip—— Service of apprenticeſhip beyond ſea ſufficient to enable him to uſe the trade in England 75, 76

Following a trade for ſeven years without binding ſufficient——Evidence of having exerciſed a trade, without having ſerved as an apprentice, not ſufficient —— 76

Power to diſcharge apprentice, extends only to ſuch trades as are ſpecially named in the ſtatute——Stat. 5 El. extends only to thoſe trades mentioned in it 77

Stat. 5 Eliz. extends to trades not mentioned in it—— A man cannot ſend his apprentice beyond ſea, except he be with him——Apprentice cannot be diſcharged without appearance or ſummons of the maſter——Uſing him unkindly is not ſufficient 78

Seſſions cannot diſcharge apprentice on account of ſickneſs——Juſtices may force a maſter to take an apprentice; Per Holt Ch. J. That the ſeſſions have not originally juriſdiction to diſcharge apprentices——Seſſions may diſcharge apprentice by original order, and order money to be returned—— Seſſions has an original juriſdiction to diſcharge apprentices——Apprentice not to be diſcharged without a reaſon —— 79

A. is bound apprentice to B. who is a freeman of the city of London, and A. is bound and inrolled there, then goes and lives with his maſter in Middleſex; the juſtices of the peace for the county may diſcharge him—Order for diſcharging apprentice, the maſter not appearing —— 80

Juſtices cannot order money to be returned on diſcharge of an apprentice——Doctrine of refunding eſtabliſhed——Order on the maſter to return money good—Report of the preceding caſe from a manuſcript —— 81

Money ordered to be refunded by the court of chancery —— 83

Debt lies at Weſtminſter on a penal ſtatute, but an indictment or information in the proper county only —— —— 84

Debt upon ſtat. 5 Eliz. ought to be had in the proper county.—Debt lies not on any penal ſtatute made before 21 Jac. 1. in B. R ——Indictment upon 5 Eliz. may be found at a borough ſeſſions 84, 85

Indictment upon 5 Eliz. c. 4. taken at the ſeſſions in a corporation, quaſhed——Indictment on 5 Eliz. c. 4 found at the ſeſſions for the city of Carliſle, held good——Information, *qui tam*, for exerciſing a trade, contrary to 5 Eliz. c. 4. not having ſerved an apprenticeſhip, may be laid at a pariſh 86

By the common law, perſons under twenty-one cannot bind themſelves apprentices——A covenant or obligation of an infant for his apprenticeſhip ſhall not bind him——If his father or other perſon doth covenant for an apprentice, ſuch covenant ſhall bind the father or ſuch other perſon, if the apprentice be likewiſe bound —— 87, 88

Covenant between the maſter and a third perſon, the ſervant not being party, makes no apprenticeſhip 88

Stat. 5 Eliz. c. 5. Owners of ſhips, fiſhers on the ſea, gunners and ſhipwrights, may take apprentices 89

Stat. 43 Eliz. c. 2. Binding of poor children apprentices —— —— 89

Stat. 1 Jac. 1. c. 17. Felt-makers to have no more than two apprentices —— 89

Stat 7 Jac. 1. c. 3. How money given for the binding of poor children to occupations, ſhall be beſtowed——How money given for the binding out of apprentices of poor children ſhall be employed, and by whom —— 90

The forfeiture of thoſe who of duty ought, and yet refuſe to employ the money——The party which receiveth the money, ſhall be bound with ſureties to repay it —— 91

Within what time the money ſhall be put forth—— A proviſion if there be not fit perſons in that pariſh to be apprentices——What ſort of perſons ſhall be apprentices——Account ſhall be made of the money employed —— 92

A remedy where any party truſted ſhall break the truſt, or commit any offence—A remedy for any party grieved by the commiſſioners 93

Stat.

Stat. 3 Car. 1. c. 4. Perſons to whom children are bound apprentices according to 43 Eliz. may take ſuch apprentices ——— 94

Stat. 8 & 9 W. 3. c. 30. Poor children bound apprentices purſuant to the act 43 Eliz. c. 2. thoſe to whom they are bound, to provide for them according to the indenture ſigned by the juſtices, &c.———Penalty on Offenders———Perſons to whom poor children are bound, being aggrieved, may appeal to the juſtices — 94

Juſtices at ſeſſions are proper judges, whether fit to oblige a perſon to take an apprentice, or not—— Men of ordinary trades, or of huſbandry, are compellable only to take apprentices 95

Stat. 2 & 3 An. c. 6. Pariſh boys may be put out apprentices to the ſea ſervice, to maſters of ſhips, &c. —— Boy's age to be inſerted in his indenture, &c. 95, 96

Churchwardens to pay down 50s for boy's neceſſary cloathing, &c. and be allowed the ſame in their accounts———Apprentices indentures to be ſent to the collector at the port whereunto his maſter belongs. Collector to enter the ſame gratis. ———Penalty on collector neglecting——Lord admiral to grant protections for ſuch apprentices, gratis. ——— 97

Pariſh boys bound apprentices, may be turned over to the ſea ſervice.———Indentures of aſſignment to be regiſtered——Maſters of ſhips, &c. obliged to take ſuch apprentices———By 4 An. c. 19. §. 16. no maſter ſhall be bound to take a boy under 13 years of age, &c and to give an account of their names, &c ——How apprentices ſhall be conveyed to the ports to which their maſters belong———The counterparts of their indentures to be tranſmitted to the churchwardens, &c. 97, 98

Juſtices to determine complaints between maſters and apprentices———Collector to keep a regiſter, &c. and tranſmit a copy thereof to the quarter-ſeſſions, &c. gratis———Penalty———Officer to inſert on the cocquet the number of men and boys on board, &c. — 99

Perſons voluntarily binding themſelves apprentices to ſea ſervice, not to be impreſſed for three years. Explained by 4 Ann. c. 19. §. 17.——Indentures to be regiſtered, and protections given for the ſaid three years———When ſuch apprentices ſhall be impreſſed, maſters to have able ſeamens wages for them———Penalties and forfeitures, how to be levied. ——— 99, 103

Stat. 4 Ann c. 19 No maſter of ſhip to take apprentice under thirteen years old 100

Stat. 8 Ann c. 9. From 1 May 1710. 6d. for every 20s of 50l or under, and 12d. for every ſum of above 50l. to be paid for every clerk or apprentice put out, for five years; made perpetual by 9 Ann c. 21. ſ 7. To be paid by the maſter—— The full ſum given with an apprentice, &c. to be inſerted in the indenture, &c. on forfeiture of double the ſum———Two new ſtamps to be provided, &c. — 101

Indentures to be brought to the head office, &c. in two months after date, and there the duty to be paid, and indenture ſtamped, &c. or the collector to indorſe a receipt, &c.——Within what time indentures ſhall be ſtampt — 102

Indentures, in which the full ſum received, is not charged, &c. void; clerk, &c. incapacitated—— Pariſhes or publick charities not charged—— No indenture to be admitted in evidence, unleſs oath made, that the ſums were actually paid, &c.———Where any thing ſhall be given to any maſter, not being money, the full value of ſuch thing to be anſwered for the duties 103

Stat. 9 Ann. c. 21. Maſters hereafter omitting, to forfeit 50l.

Stat. 18 Geo. 2. c. 22. Further penalties for not paying the ſaid duties, how to be recovered 104

Stat. 20 Geo. 2. c. 19. Certain apprentices, to ſummon the maſter, &c. and upon ſatisfactory proof, to diſcharge the apprentice——Juſtices upon complaint of maſters againſt apprentices, and proof upon oath, to puniſh the offender by commitment, &c.———Perſons aggrieved may appeal. Exception———Coſts not to exceed 40s.———No writ of certiorari ——— 105

Stat. 20 Geo. 2. c. 45. Upon payment of double duties and tender of the contracts to be ſtamped within two years after the end of the apprenticeſhip, &c. the contracts to be good, &c Penalties incurred for omiſſions, diſcharged upon payment of double duties———Apprentices, &c. paying the double duties forfeited by their maſters, &c. to be reimburſed double the ſum paid in reſpect of ſuch apprenticeſhip, &c with coſts; and be diſcharged from their apprenticeſhip, if they require it 105, 106, 107

And to have the ſame benefit of their ſervice, as if they had been turned over———Apprentices paying the double rates where proſecutions are commenced againſt their maſters, to be qualified to follow their trades, &c. ——— 107

Stat. 5 G. 3. c. 46. Where the freedom of any city or company is obtained by ſervitude, the chamberlain, or other proper officer, is to enter the names of all perſons put out clerks, apprentices, or ſervants, with the names and abode of the maſters, the apprentice fees, and dates of the indentures, &c. on forfeiture of 20l. and the following notice to be printed under all printed indentures, &c.——— The notice——On forfeiture of 10l. 107, 108

Stat. 6 Geo. 3. c. 25. Juſtices impowered to oblige apprentices abſenting before expiration of his apprenticeſhip, to ſerve for ſuch term as he ſhall abſent, or to make ſatisfaction; except as to apprentices paying 10l. fee; or where ſeven years ſhall have elapſed ——— 109

Juſtices

Juſtices impowered to grant warrants againſt artificers and others not fulfilling their contract, or being guilty of any miſdemeanor, and upon conviction to commit the offender——Perſons aggrieved by the order of a juſtice (except in caſes of commitment) may appeal; giving notice to the juſtice, and entering into recognizance, &c.——Juſtices at the quarter ſeſſions impowered to determine the appeal, and award coſts——Limitation of this act with reſpect to the Stannaries, and the city of London —— 109, 110

Stat. 7 Geo. 3. c. 21. Two or more juſtices, though not of the quorum, impowered to carry certain acts into execution —— 111

Stat. 7 Geo. 3. c. 39. Children born in, or received into, any work-houſe or pariſh houſe, within the ſeveral pariſhes here mentioned, are to be nurſed, and taken care of, as follows; viz. Such of them as are under ſix years of age, to be ſent in the country, not leſs than three miles off; thoſe under two years, not ſuckled by the mother, not leſs than five miles off; and thoſe above two, and under ſix years of age, not leſs than three miles off—— Weekly rates to be paid for their nurſing and maintaining, till apprenticed, or returned to the work-houſe——Conditional reward to nurſes for their care——Cloathing to be furniſhed, and all other incidental expences defrayed, by the pariſh, and ſeparate accounts to be kept thereof 111, 112

Five guardians of the pariſh poor children to be choſen——Where any ſhall refuſe to act or ſhall reſign, or die, a further choice to be made—— Firſt guardians to continue in office till the year 1770; future guardians to remain three years in office——Churchwardens and overſeers diſqualified from being elected guardians—— Power and duty of guardians——Evils complained of by them, how to be remedied 113

A meeting of the guardians to be ſummoned every ſix weeks; two make a quorum——Power given them ſingly, or jointly, to call in the churchwardens or overſeers——Liberty granted, of ſending pariſh poor children, under ſix years of age, to the Foundling Hoſpital, upon ſuch terms as ſhall be agreed on——The charge to be defrayed out of the poor rates; and if not duly paid, any juſtice may ſummon the overſeers, and order immediate payment, with the charges incurred; and, on refuſal, may levy the ſame by diſtreſs and ſale —— —— 114, 115

The death, diſcharge, or apprenticeſhip, of any child, to be certified to the veſtry clerk of the pariſh—— Hoſpital account to be kept with each pariſh diſtinct——Pariſh children, and foundlings, to be apprenticed for not more than ſeven years, or till twenty-one years of age——Apprentice fee not to be leſs than 4l. 2s. and to be paid at two payments —— 115

Particular regiſters to be provided by each pariſh according as they come within the following deſcription——Entry to be made at the foot of each regiſter——Form of the abſtract of the regiſter of the infant poor —— Manner of conducting their regiſters——Annual liſt to be made out by each pariſh of the children apprenticed, and delivered to the company of pariſh clerks; abſtract thereof to be printed, and delivered to each pariſh. Regiſters and liſts to commence and end annually at a certain time 116

General expences not otherwiſe provided for, to be paid out of the poors rates——Penalty on pariſh officers, and others, neglecting their duty 117

Approver.

Who are and may be approvers — 123, 124

Aqua vitæ. See Exciſe.
Arbitration. See Award.
Armour embeziling See Stores.
Armour popiſh. See Popery.
Armour ſeizing. See Affray.
Arms. See Affray.

Arraignment.

What it is, and the pleas thereon — 124, 125

Arreſt.

What it is——By whom offenders may be arreſted or apprehended — 125

Stat. 34 Ed. 3. c. 1. For what cauſes of ſuſpicion perſons may be arreſted——By whom the perſon muſt be ſuſpected — 126

Whether any ſuch cauſe of ſuſpicion will juſtify an arreſt where no treaſon or felony hath been committed, or dangerous wound given——In what manner an arreſt for ſuch ſuſpicion is to be juſtified in pleading — 127

Arreſting of offenders by private perſons of their own authority, permitted by law for the prevention of treaſon or felony, or in reſpect of inferior offences ——Of arreſting offenders by conſtables by their own authority — 128

Of arreſting offenders by conſtables by warrant from a juſtice of peace — 129

Of arreſting offenders by command of juſtices of peace. By warrant, &c. 131

In what form ſuch warrant is to be made——In what manner ſuch warrant is to be executed 132

Of breaking open doors, in order to make an arreſt 133

Arſon. See Burning.

Articles of the Peace.

Definition of articles of the peace — 134

Stat. 21 Jac. 1. c. 8. proceſs and writ of *ſuperſedeas* of the peace, or good behaviour, ſhall not be granted, but upon motion in open court 134

False sureties procured for the gaining of writs of supersedeas shall be punished by the judges 135
The court will not inquire into the truth of articles of the peace——How to take security of the peace where a marriage is disputed——Mandamus to take security on articles——Fact committed before an act of grace may be a ground for articles of the peace —— 136
Articles of the peace ought to be exhibited in the neighbourhood, that the security may be given there——Articles of the peace appearing false and malicious, process was stayed, and the exhibitant committed for perjury——Articles of the peace being exhibited in London, for a fact done at Portsmouth, attachment ordered to be indorsed with a direction to any justice to take security 137
Artificers. See Servants.

Assault and Battery.
Definition of assault and battery — 138
In what cases an assault and battery may be justified —— How unlawful assaults and batteries are punished —— 139
Stat. 9 Ann. c. 16. whoever shall assault a privy counsellor shall suffer death —— 140
Stat. 7 Geo. 2. Persons convicted of assaulting others with offensive weapons, and a design to rob, shall be transported for seven years——Such convicts breaking gaol, or unlawfully returning from transportation, shall suffer death 141
Stat. 6 Geo. 1. c. 23. Assaulting any person in the street, &c. to tear their cloaths, &c. shall be guilty of felony, and may be transported for seven years 141, 142
Assessment. See Militia.

Assizes.
Definition of assize——The several commissions of the judges of assize——Sheriffs and justices of peace bound to attend —— 142, 143

Attachment.
Definition of attachment —— 143
Sessions cannot award an attachment for not awarding an order —— 144

Attainder.
Definition of attainder——Difference between a man attainted and convicted —— 144

Attaint.
Definition of attaint —— 145

Attorney.
Definition of attorney——Attornies formerly made by letters patent —— 145
Stat 33 Hen. 6. c. 7. A practice of contentious attornies, to stir up suits for their private profits—— There shall be but six common attornies in Norfolk, six in Suffolk, and two in Norwich—— Justices of peace shall have authority to inquire of offenders —— 146
Stat. 3 Jac. 1. c. 7. An attorney shall have a ticket of the money which he giveth for fees, &c.—— An attorney delaying his client's suit, or demanding more than is due——Who only shall be attornies or solicitors —— 147
No following of a suit in another's name 148
Stat. 2 Geo 2. c. 23. After 1 Dec. 1730, no person to be admitted an attorney, unless he take the oath, and be inrolled——Judges to examine into his capacity, before admission 148
None to be permitted to act as a solicitor, unless he take the oath, and be inrolled——Court of equity to examine solicitors —— 149
After 1 Dec. 1730, none to act as attorney, unless he has served a clerkship, and been admitted—— Judges before they admit them to take the oath, to examine their fitness——After 1 Dec. 1730, none to act as solicitor before he has served a clerkship, and been duly admitted. 150
Judges of the courts of equity to examine solicitors ——Attornies or solicitors, with consent of an attorney of another court, may sue out writs, &c. in such court —— 151
Judges not to swear a greater number of attornies than formerly allowed——Clerks on the death of their masters, &c. may be turned over——Attornies before admission to take the following oath 152
Solicitors to take the oath following——No attorney to have more than two clerks at one time.—— Prothonotaries or secondary of common pleas, &c. to have three clerks——After 1 Dec. 1730, sworn attornies, permitting those that are not to issue out writs, disabled from practice —— 153
After 1 June 1729, attornies and solicitors to be inrolled in the proper courts——Attornies to be admitted without stamp, if sworn before 1 June 1729——A sworn attorney may be admitted a solicitor —— 154
A sworn solicitor in one court of equity, may be admitted into any other court——The name of the attorney to be writen on every writ, &c.——Attorney, &c. not to commence an action for fees till one month after the delivery of their bills 155
Judges, &c. to refer bills to be taxed, without money being brought into court, &c. —— 156
Attorney, &c. in their own name suing out any writ, &c. not inrolled, forfeit 50 l ——Forfeitures how to be recovered —— To what clerks, &c. the act doth not extend.——The attornies and clerks in the exchequer, herein mentioned, may act as heretofore —— 157
As also the solicitors of the treasury, &c. 158
Stat 5 Geo 2. c. 18. No persons to be justices who have not 100 l. a year clear of incumbrances 158
Attornies, solicitors, and proctors incapacitated—— persons acting as justices, not so qualified, to forfeit 100 l.——Not to extend to cities which are counties,

counties, or other places having juſtices by charter ——Nor to the eldeſt ſons of peers, or of knights of ſhires, 9 Annæ, c. 5.——Nor to the board of Green Cloth——Or principal officers of the navy. 159

Nor to heads of colleges in either univerſities 160

Stat. 6 Geo. 2. c. 27. Attornies admitted by virtue of 2 Geo. 2. c. 23. may be admitted to practiſe in inferior courts of record —— 160

Stat. 12 Geo. 2. c. 13. The not indorſing the attorney's name on warrants upon writs, not to vitiate the ſame——Officers to indorſe the attorney's name upon writs —— 160

Attorneys &c. may uſe abbreviations in their bills ——Act 2 Geo. 2. not to extend to any bill of fees between one ſolicitor and another——Penalty on perſons unqualified acting in county courts—— Quakers to be inrolled upon their affirmation—— No attornies, &c. to commence ſuits, if priſoners 161

Stat. 22 Geo. 2. c. 46. Perſons bound to ſerve as clerks, to attornies, to cauſe affidavit to be made within 3 months of the execution of ſuch contracts, &c —Affidavit to be filed—None to be admitted before ſuch affidavit be produced——Officers who are to file ſuch affidavits —— 162

Books to be kept for entering the names and places of abode of every ſuch attorney and clerk, &c.—— Fees for filing the affidavits—No attorney to take &c. a clerk, after diſcontinuing buſineſs—— Clerks to be employed in their proper buſineſs during the time of their contract—Affidavit of the execution of ſecond contracts by ſuch clerks, the ſervice of five years to be deemed effectual 163

Clerks, before admitted, to make affidavit of having ſerved five years——Sworn attornies acting as agents for perſons not qualified, &c. to be ſtruck off the roll, and to be committed 164

None to act as attornies at the ſeſſions who were not admitted according to 2 Geo. 2. c. 23.—Penalty 50 l. with treble coſts—Attornies ſuffering perſons not admitted to uſe their names to forfeit 50 l. See 23 Geo. 2. c. 26.—Perſons exempted—— No clerk of the peace, under ſheriff, &c, to act as attornies, &c. at quarter ſeſſions for the county, &c. —— 164, 165

Clerks, whoſe maſters have died, ſerving the reſidue of their times with others without freſh contracts, to be admitted——Perſons admitted ſworn clerks in the office of the ſix clerks, or bound for five years, &c may be admitted ſolicitors——Clerks, whoſe maſters have died, &c. entering into freſh contracts, and ſerving the reſidue of their time, the ſame to be effectual —— 166

No ſworn clerk to have more than two clerks—— Perſons exempted —— 167

Stat. 23 Geo. 2. c. 26. Solicitors in the courts of equity may be admitted attornies without fees 167, 168

Award.

Definition of award, and what things may be determined thereby —— 168, 169

The different kinds of ſubmiſſion and the revocation thereof —— 170

Stat. 9 & 10 W. 3. c. 15. Merchants and traders, &c. deſiring to end controverſies by arbitration, may agree their ſubmiſſion of the ſuit to the award of any perſon——Agreement ſo made to be inſerted in their ſubmiſſion, &c.——Parties to be finally concluded by ſuch arbitration——In caſe of diſobedience, party neglecting ſubject to penalty, &c. unleſs arbitrators misbehaved themſelves——Corrupt arbitration void, and may be ſet aſide, &c. —— —— 171

The act 9 & 10 W. 3. c. 15. was made to put ſubmiſſions where no cauſe was depending, upon the ſame foot with thoſe where there was a cauſe depending; and it is only declaratory of what the law was before, in the latter caſe 172

The court wherein the rule is made is the proper court to examine into the partiality of the arbitrators——Where the parties have agreed to make the ſubmiſſion to an award a rule of court, and to be reſtrained from bringing a bill in equity, the arbitrators, notwithſtanding the award may be defective in point of law, may plead it in bar to a bill here —— 173

Arbitrators may plead the award in bar to a bill charging partiality, but they muſt ſupport their plea by ſhewing themſelves impartial, or the court will give the party a remedy by making them pay coſts——Where a ſubmiſſion to an award has been made a rule of court, it is a contempt of that court to diſpute the order, unleſs they can ſhew partiality, corruption or misbehaviour in the arbitrators 174

A plea to a bill brought to ſet aſide an award, and for a general account; Lord Hardwicke allowed it as againſt the general account; but held the plaintiff was not precluded at the hearing from objecting to the award, for fraud or partiality in the arbitrators —— 175

Improper to come into this court to ſet an award aſide, merely for an objection in form——Courts of law formerly uſed too much nicety in determining awards——Though arbitrators refer coſts to be taxed, yet it will not vitiate the award at law—— If courts of equity were to take greater latitude in determining awards than courts of law, it would introduce confuſion and uncertainty; better therefore to adhere to one rule——As courts of law have ſaid they will never make a preſumption to overturn an award, ſo neither will a court of equity——Where an award is good to a common intent, and anſwers the purpoſe of parties in ſubmitting to a reference, the court will not ſet it aſide upon trivial objections —— 177

If arbitrators delegate their power, the award is totally void—Arbitrators need not point out particularly the method in which the award is to be carried into execution——Where arbitrators have awarded releaſes, the leaving it to the court to give directions to the maſter to ſettle the form does not vitiate an award ——— 178
In an agreement between partners to refer matters in diſpute, arbitrators ſhould be impowered to examine upon oath——Of the parties to the ſubmiſſion ——— 179
Of the arbitrators or umpire, and their power 180, 181
Of the award, and what ſhall be deemed a good award——The award muſt be according to the ſubmiſſion ——— 182
The award muſt be certain ——— 184
The award ought to be equal and mutually ſatisfactory——The award muſt be of a thing lawful and poſſible ——— 185
The award muſt be final ——— 186
Awards are now conſidered with leſs ſtrictneſs than formerly; yet they muſt be certain and final 187, 188
In an action of debt upon the award itſelf, the plaintiff need not ſhew forth ſo much as he muſt have done, if he had brought it upon the arbitration bond ——— 189, 190

Badgers.

Definition of badger——— Stat. 5 & 6 Ed. 6. c. 14.
Who ſhall be judged a foreſtaller, who a regrator, and who an ingroſſer; and the puniſhment of them—puniſhment for the firſt offence — 191, 192
Puniſhment for the ſecond and third offences——To what retailing and other acts this ſtatute doth not extend——Badger, &c. to be allowed by the quarter-ſeſſions, &c. ——— 193
Changing of ſeed-corn———No perſon may ſell his cattle within five weeks after he bought them——The juſtices of peace may enquire, hear and determine the offences aforeſaid ——— 194
But one puniſhment for one offence———Tranſporting corn, &c. from one port to another by licences of the juſtices——Every man may ingroſs corn being at theſe prices——Within what time the offender muſt be ſued———Regrating of freſh fiſh ——— 195
Drovers of cattle licenſed by the juſtices may buy and ſell again——Drovers to be allowed by the quarter-ſeſſions, by 5 Eliz. c. 12. 196
Stat 5 Eliz. c. 13. Who ſhall be accounted an ingroſſer by the ſtatute of 5 & 6 Ed. 6. c. 14——A proviſo for a badger, carrier, &c. licenſed———
A proviſo for a drover of cattle, or for buying of corn to be tranſported from one port to another 196
The inconvenience enſuing the number of drovers of cattle and badgers, &c. of corn and other victuals——To what kind of perſons, and at what places only licence ſhall be granted to be badgers, drovers, &c ———The date of the licence, and the juſtices hands and ſeals —— 197
Bonds with ſureties ſhall be taken of drovers, carriers, &c. not to infringe this act——The fees of the clerk of the peace——None ſhall buy corn to ſell again without ſpecial licence——Who ſhall have the forfeitures——Juſtices of peace in their ſeſſions ſhall inquire of and determine theſe offences ——— 198
A city, &c. may appoint purveyors of their proviſion———To the inhabitants of which counties this ſtatute doth not extend —— 199
Stat. 13 Eliz. c. 25. No perſon to be admitted a badger, &c. in other form than is preſcribed by ſtat. 13 Eliz. c. 25.

Bail.

Definition of bail———Difference between bail and mainprize—Who are bailable or not bailable 200
Stat. Weſt 1. (3 Ed. 1.) c. 15. What offenders are mainpernable or not—Penalty for unlawful mainprize——Penalty for detaining a priſoner that is mainpernable ——— 201
Commentary on the laſt mentioned ſtatute 202—206
Stat. 1 R. 3. c. 3.
Every juſtice of peace may admit a priſoner to bail, Rep. 3 H. 7. c. 3.——Eſcape of felons inquirable by juſtices of peace——No officer ſhall ſeize the goods of a priſoner until he be attainted, or the goods forfeited ——— 206
Stat. 3 Hen. 7. c. 3. Juſtices of the peace may let a priſoner to mainprize who is mainpernable——Inforced by 1 & 2 Phil. & Mar. c. 13.———The ſheriff ſhall certify the names of all priſoners in his cuſtody to the juſtices of gaol-delivery——A repeal of the ſtat. of 1 R. 3. c. 3. touching the bailing of priſoners ——— 207
Stat. 1 & 2 Phil. & Mar. c. 13. In what manner juſtices of peace may bail perſons arreſted of felony, or ſuſpicion thereof, &c.——None ſhall be let to bail, which be forbidden to be bailed by the ſtatute of 3 Ed. 1. c. 15.—The juſtices duty in bailment of a priſoner; extended to ſuch as ſhall be committed for manſlaughter, &c. 208
The coroner's duty upon an inquiſition found before him——The penalty of any juſtice of peace or coroner omitting his duty——Juſtices of peace of London, Middleſex, &c. may bail felons and priſoners——Removing a priſoner, or recognizance 209
Manſlaughter not bailable, if confeſſed by the party—What ſhall be deemed ſufficient bail 210
Exceſſive bail not to be required——Of taking inſufficient bail——Of granting bail where it ought to be denied ——— 211
Stat. 27 Ed. 1. c. 3. Juſtices of aſſize ſhall be alſo juſtices of gaol-delivery ——— 211.

Puniſhment of ſheriffs for their offences 212
Stat. 4 Ed. 3. c. 2. "The authority of juſtices of aſſize, gaol-delivery, and of the peace."——Information againſt a juſtice for bailing a felon——Court refuſed to bail a perſon for receiving ſtolen goods; defendant's affidavit admits the receipt of the goods, but denies he knew them to be ſtolen, which is a fact triable only by a jury 212, 213
Offence of denying, delaying or obſtructing bail where it ought to be granted —— 213
Stat. 31 Car. 2. c. 2. Bail by Habeas corpus 213
Writs of Habeas corpus within three days after ſervice to be returned, and the body brought, if within twenty miles, &c.—Such writs how to be marked——Writs of Habeas corpus, and the proceedings thereon in vacation time 214
Perſons neglecting two terms to pray a Habeas corpus, ſhall have none in vacation time, in purſuance of this act——Officers how to be proceeded againſt not obeying ſuch writs——Perſons ſet at large to be re-committed but by order of court——Perſons committed for treaſon or felony ſhall be indicted next term, or let to bail, and tried the term, &c. after, or diſcharged 215, 216, 217
The penalty for denying a habeas corpus——Habeas corpus ſhall run into county palatine and privileged places——No ſubjects ſhall be ſent to foreign priſons —— 218
Perſons receiving earneſt upon contracts to be tranſported, excepted——Perſons convicted of felony, and praying tranſportation, excepted—Impriſonment before the firſt of June 1679. excepted——Offenders may be ſent to be tried where their offences were committed——Proſecutions for offences within what time to be made—— After the aſſizes proclaimed, no priſoner to be removed, but before the judge of aſſize 219
In ſuits for offence againſt this law, the defendants may plead the general iſſue, &c.——Perſons committed as acceſſaries before to petty treaſon or felony, ſhall not be removed or bailed otherwiſe than before this act made——Habeas corpus for a young lady who had been decoyed away from her parents —— 220, 221
No peer or lord of parliament hath privilege againſt being compelled to pay obedience to a writ of habeas corpus directed to him 222, 223, 224
Habeas corpus for a wife —— 225
Habeas corpus, if ſued in vacation, and returnable immediately before a judge at his chambers, does not expire, by the coming in of the term; but the defendants may be brought into court at Weſtminſter upon the old writ——An impreſſed man in cuſtody at the Savoy, brought up by his bail, in order to be ſurrendered by them in their diſcharge, was firſt committed to the marſhal, with orders to deliver him inſtanter to the keeper of the Savoy: And an exoneretur was entered 226
Inſpection of a perſon confined in a mad houſe was ordered to be had by proper perſons, previous to granting a habeas corpus —— 227
Stat. 21 Jac. 1. c. 26. It is felony to levy a fine, ſuffer a recovery, &c. in another's name not privy thereto——This felony ſhall not corrupt the blood, nor take away dower——An attorney may do it for another man——Where bailis perſonated, he cannot be diſcharged till the offender is convicted —— 228
Foreign bail, cauſe for the pillory —— 229
Stat. 4 W. & M. c. 4. Chief juſtices, &c. may make any perſons, except attornies and ſolicitors; commiſſioners to take bail in the country——Juſtices, &c. to receive the bail-piece upon affidavit of due execution —— 229
Bail taken below to be de bene eſſe——Commiſſioners fee——Power given to juſtices, &c. to make rules for juſtifying, but not to order the perſon's appearance——London, &c. ſaved ——Juſtices of aſſize may take bail——Felony for any perſon to be bail in another man's name —— 230
Bailiff. See Sheriff.

Baker.

Definition of baker——Stat. 29 Car. 2. c. 7. ſ. 1. No baker to exerciſe his trade on the Lord's day——Baking puddings, pies and ſuch things on a Sunday, is not within ſtat. 29 Car. 2. c. 7. but is within the equity of the proviſo in the third ſection of it, as a cook's ſhop; and within the exception of works of neceſſity and mercy 231

Ballaſt.

Definition of ballaſt——Stat. 34 & 35 Hen. 8. c. 9. Penalty for caſting of ballaſt, rubbiſh, &c. into any channel, haven, road, or river 233
Stat. 19 Geo. 2. c. 22. Maſters, &c. throwing out ballaſt, &c. out of any ſhip, &c. in harbour, &c. but upon dry land only——Juſtices may iſſue warrants, and upon proof, &c. fine them not more than 5l. nor leſs than 5os.——Penalties, how recoverable —— 234
Ship ſunk or ſtranded, &c. in an harbour, and permitted to remain there, juſtices to ſummon the owner, &c. and upon conviction, to iſſue warrants for ſeizing and removing the ſhip and tackle, and unleſs the owner give ſecurity within five days, to make ſale of the ſame —— 235, 236
Juſtices to execute this act indiſcriminately——Convictions to be final——Diſtreſs not to be ſold till after five days——Limitation of the power of this act —— 236
Navigation may not be obſtructed by caſting rubbiſh, or unlading ballaſt, in any haven, roads, channels, &c. but only upon the land, where the tide never flows, by ſtat. 34 and 35 Hen. 8. c. 9. and 19 Geo. 2. c. 22. the unloading it into a hopper, with an intent to carry it out to ſea is an offence againſt the expreſs proviſion of the latter act, which ſays, "That it ſhall not be diſcharged but only upon land; but putting it into a hopper, in order to carry it upon land, would not be ſo; nor ſelling

it

it out of one ſhip into another, with intention to drop it any where" 237

Bankrupt.

Derivation and definition of bankrupt——Commiſſions of bankruptcy derived from the civil law ——Bankrupt conſidered in the light of a criminal offender——Severity of the Roman law to bankrupts —— 239, 240

Benefit of laws of bankruptcy allowed to none but traders —— 241

Stat. 34 & 35 Hen. 8. c. 4. Complaint——Order ——Sale, &c. —— 242, 245

Stat. 13 Eliz. c. 7. Who is a bankrupt, how and by whom his body, lands, and goods ſhall be ordered for payment of the creditors — 245

Who ſhall be ſaid a bankrupt——The lord chancellor may grant a commiſſion to take order for bankrupts bodies, lands and goods —— The authority of the commiſſioners——The commiſſioners may ſell bankrupts lands, goods, &c. 246

Againſt what perſons the commiſſioners ſale of a bankrupt's lands, goods, &c. ſhall be available—— Vendees of copyhold lands ſhall compound with the lord of the manor for their fines——The commiſſioners ſhall declare to the bankrupt how they have beſtowed his lands and goods—— The remedy where goods or debts of bankrupts be in the hands of others —— 247

The penalty of ſuch as be examined, that will not diſcloſe the truth, or refuſe to ſwear——How the forfeiture ſhall be recovered and employed ——A remedy againſt them who detain the goods of bankrupts —— 248

How the forfeitures ſhall be beſtowed after the bankrupts debts be paid——A remedy againſt him who withdraweth himſelf from his dwelling place——The penalty of a bankrupt not yielding himſelf after proclamation, and of ſuch as do hide or receive him —— 249

A remedy for the creditor, if he be not ſatisfied for his whole debt——Lands, &c. extendable, which he purchaſed, or do deſcend to a bankrupt ——Lands conveyed away before the party become bankrupt —— 250

Stat. 1 Jac. 1. c. 15. An expoſition and addition to the ſtatute of bankrupts, made 34 & 35 H. 8. c. 4. 13 Eliz. c. 7.——Who ſhall be adjudged a bankrupt——The like commiſſions, orders, benefits and remedies as be provided for bankrupts by the ſtatute of 13 Eliz. c. 7. 251

New creditors partakers with the former——A bankrupt conveying his lands or goods to others, or transferring his debts into other mens names ——In what caſe he that doth withdraw himſelf ſhall be proclaimed a bankrupt 252

A bankrupt apprehended, which upon warning, refuſeth to appear——The examination of a bankrupt——A bankrupt refuſing to anſwer—— The puniſhment of a bankrupt committing perjury — — 253

Examination of ſuch as have bankrupts goods, or be indebted unto them——The puniſhment of ſuch as will not appear, or not ſwear to anſwer interrogatories — — 254

Witneſſes allowed their coſts——The penalty of others beſide the bankrupt committing perjury—— Who ſhall recover the forfeitures, and how they ſhall employ them——The authority of commiſſioners touching debts due to a bankrupt 255

The remedy for the creditor to recover a bankrupt's debt aſſigned to him by the commiſſioners——— Commiſſioners ſhall declare to the bankrupt how they have beſtowed his lands and goods——The commiſſioners plea in an action brought againſt them — — 256

The commiſſioners ſhall proceed to an execution, tho' the bankrupt die — 257

Stat. 21 Jac. 1. c. 19. Laws made againſt bankrupts ſhall be beneficially conſtrued for the creditors—— Who ſhall be deemed a bankrupt 257

Commiſſions, orders, &c. provided by 13 El. c. 7. and 1 Jac. 1. c. 15 ſhall be purſued againſt him that is deſcribed to be a bankrupt by this act—— Orders, &c. provided by this act, ſhall be purſued againſt him that is deſcribed to be a bankrupt by 13 El. c. 7. and 1 Jac. 1. c. 15. 258

The bankrupt's wife may be examined by the commiſſioners——The bankrupt that fraudulently concealeth his goods, or rendereth not ſome juſt reaſon why he became bankrupt, ſhall be ſet upon the pillory, and loſe one of his ears 259

The commiſſioners may break open the bankrupt's doors, &c.——The bankrupt's goods ſhall be rateably divided, notwithſtanding any judgment, recognizance, &c. —— 260

The commiſſioners may proceed when the bankrupt by fraud makes himſelf accountant to the king—— Goods in the poſſeſſion, &c. of the bankrupt, are liable to pay his debts, notwithſtanding any former grant, &c.——A grant of the intailed lands of the bankrupt ſhall be good 260, 261

Conditional eſtates granted by the bankrupt may be redeemed by the commiſſioners——The commiſſion ſhall be ſued forth within five years—— Strangers ſhall take advantage of this, and all other laws againſt bankrupts 262

Stat. 1. Car. 2. c. 24. No perſons for putting in money to the Eaſt India or Guinea Company, or the fiſhing trade, ſhall be eſteemed a trader within the ſtatute of bankrupts——Proviſo for others trading——The judgment concerning Sir John Wallſtenholme made void —— 263

Proviſo for purchaſers in the caſe of Sir John Wallſtenholme.

Stat. 10 Ann. c. 15. After April 20, 1712, the recited act, and all others, as far as they relate to the deſcription of a bankrupt, are repealed—— Not to fruſtrate any act, ſale, &c. of the eſtates

of ſuch perſons, by any commiſſion taken out before the ſaid 20th of April——By the diſcharge of a bankrupt his partner ſhall not be diſcharged 265
Stat. 7 Geo. 1. c. 31. Perſons taking bills, bonds, &c. payable at a future day for goods delivered to ſuch as after become bankrupt, ſhall be admitted to prove their bills, &c. and be intitled to a proportionable part of the bankrupt's eſtate——— Diſcounting ſuch ſecurities after the rate of 5 l. per cent. for what they receive——Bankrupts ſhall be diſcharged of ſuch ſecurities——No ſuch creditor ſhall join in ſuing forth a commiſſion, till ſuch debt become due ——— 266
Stat. 5 Geo. 2. c. 30. Bankrupts ſince 14th May 1729, not ſurrendering within 42 days notice, conforming to the ſtatutes, or embeziling goods to the value of 20 l. guilty of felony———Goods of bankrupts condemned to go to the creditors 268
Number and limitation of ſittings——Lord chancellor may enlarge the time for ſurrendering—Books of accounts to be delivered to the aſſignees on oath—Bankrupt to attend aſſignees, inſpect accounts and be free from reſtraint during examination, if not in cuſtody before———Penalty on officer detaining bankrupts from attending aſſignees——Bankrupts in cuſtody to be brought before commiſſioners at the creditors expence; if in execution, commiſſioners to attend them in priſon 269, 270
Allowance to bankrupts——Bankrupts diſcharged freed from future arreſts ——— 271
Bankrupts allowance if the effects amount not to 10s. per pound———In what caſes future effects of bankrupts ſtill liable to creditors———On what conditions certificates to be ſigned 272
Contracts to induce creditors to ſign certificates, void 273
Perſons excepted from the benefit of this act——— Bankrupts impriſoned after certificate allowed, how to be diſcharged ——— 274
Judges or juſtices may grant warrant to apprehend bankrupts not conforming———Gaolers to give notice to commiſſioners———Goods or books to be ſigned in priſons———Bankrupts ſo apprehended, on conformity, to have the benefit of the act 275
Perſons not anſwering interrogatories of commiſſioners to be impriſoned——To be particularly ſpecified in the warrant ——— 276
If habeas corpus be brought on ſuch commitment, the judge may recommit the priſoner——Penalty on gaoler for eſcape 500l.—Penalty on gaoler refuſing to produce his priſoner——Allowance to perſons making diſcovery of bankrupts eſtate 277
Penalties on perſons concealing effects in truſt——— Perſons having bonds or notes may join in petitioning for commiſſions———Conditions of granting commiſſions ——— 278
Commiſſions fraudulently obtained to be ſuperſeded, and another granted——Penalty 279
The charge of commiſſions to be paid by the aſſignees ——Creditors may prove debts without paying contribution——Notice of meeting to be given in the Gazette——Debts how to be prove—— Choice of aſſignees ——— 280
What perſons not qualified to chooſe—mutual credit how to be ſettled———Penalty on debts falſely claimed———Commiſſioners may chooſe new aſſignees ——— 281
Penalty on firſt aſſignees not delivering up the effects to the new ones——Notice of ſuch removal to be given in the Gazette —— 282
Creditors before chooſing aſſignees to fix the method of dividends———Method of making dividends 283
Aſſignees with conſent of creditors, may ſubmit diſputes to arbitration ——— 284
Aſſignees with conſent of creditors may compound for debts——Bankrupts, after allowance of certificate, to attend aſſignees in ſettling accounts——Allowance for attendance——Impriſonment on non attendance —— 285
Final dividend within 18 months——Exceptions—— No ſuit in equity to be commenced without conſent of creditors——Bankers, brokers and factors liable to ſtatutes——Perſons not liable 286
Proceedings to be entered on record, by direction of the lord chancellor —— 287
Liberty to ſearch——Clauſe to prevent unneceſſary expences —— 288
Commiſſioners oath———A memorial thereof to be regiſtered——Commiſſions not to abate by the death of his majeſty, &c.———Bills of fees, &c. to be ſettled by a maſter in Chancery 289
Certificates of bankrupts before 14 May, 1729, on conformity, confirmed——And proceedings againſt them diſcharged——Declaration of the act 290
Stat. 19 Geo. 2. c. 32. After 29 October 1746, Creditors of bankrupts not liable to refund to the aſſignees, monies received before notice of inſolvency, &c.———Obligees in bottom-ree, &c. admitted to claim dividends 290, 291, 292.
Bankrupts diſcharged from debts on policy of inſurance, &c. —— —— 293
Stat. 24 Geo. 2. c. 57. Perſons ſwearing to a fictitious debt from a bankrupt, and ſigning the certificate; unleſs the bankrupt ſhall diſcloſe the fraud, the certificate to be null, &c.———Letter of attorney from creditor in foreign parts, to authorize ſigning certificate ——— 292
Stat. 4 Geo. 3. c. 33. From and after 11 May 1764. creditors, to a certain value, of any merchant, &c. within the deſcription of the laws relating to Bankrupts, having privilege of parliament, may, upon affidavit made of the debt, and filed in any of the courts at Weſtminſter, ſue out a ſummons, or original bill, &c. againſt ſuch debtor: and if he ſhall not, within two months, pay, ſecure, or compound for the debt, he ſhall be adjudged a bankrupt; and a commiſſion may be accordingly ſued out againſt him——But this act is not to extend to ſuch debts as were contracted before 8 March 1764———

But

But any merchant, &c. committing an act of bankruptcy after the last day of this session, the creditors may sue out a commission against him, and the commissioners proceed therein, as against other bankrupts, notwithstanding his privilege——Persons intitled to privilege, not subject to arrest, &c. except in cases made felony — 295, 294
Who may be a bankrupt——Bankers, &c.——Clergymen are subject to the bankrupt laws——Carpenters, &c.——Cow keepers, &c.——Bakers, &c.——Traders out of the kingdom.——Officer, &c.——Feme covert in London, &c.——Barrister, &c. Peers, &c.——Pawn-brokers, &c.——Physician, &c.——Scriviners, &c.——Who may not be bankrupts 295, 296
What are acts of bankruptcy. 1. To depart the realm. 2. To begin to keep his house. 3. To absent himself. 4. To take sanctuary. 5. To suffer himself willingly to be arrested for any debt, or other thing not grown due, &c 6. To suffer himself to be outlawed. 7. To yield himself to prison. 8. To depart from his dwelling house, to the intent or purpose to defraud or hinder a just creditor. 9. Willingly or fraudulently to procure himself to be arrested, or his goods, or money to be attached. 10. To make any fraudulent conveyance of his lands, &c. 11. Obtaining any protection otherwise than being lawfully protected by privilege of parliament. 12. Preferring petitions to compel creditor to accept less than his debt, &c. 13. Being arrested for debt shall after his arrest lie in prison two months upon that or any other arrest or detention, 14. Being arrested for 100l. or more of just debt, shall, after such arrest, escape out of prison 297, 302

Banks.

Definition of bank——Stat. 22 Hen. 8. c. 11. Cutting down or breaking up of dikes in marsh land is felony — 303
Justices of the peace to inquire of offenders, and award process, &c. — 304
Stat. 10 Geo. 2. c. 52. Piles, chalk, &c. used for the security of marshes, not to be removed, on forfeiture of 20l. to be levied by distress, or imprisonment for six months — 334, 303
Stat. 4 Geo. 3. c. 12. Persons who shall damage any banks, flood-gates, or other works belonging to rivers, &c. made navigable by act of parliament, shall be adjudged guilty of felony, and be transported for 7 years — 305

Barratry.

Description of a Barrator — 306
How offenders are to be proceeded against, and punished — 307, 308
Barrel. See Coopers.

Bastard.

Definition of bastard——All well regulated governments have settled rules of propagation, &c. 308
Stat. 20 Hen. 3. c 9. He is a bastard that is born before the marriage of his parents——Who shall be deemed bastards — 309
Where access is presumed, yet evidence may be given of the impossibility of begetting children——Order to charge a man to be the father of a bastard begotten on a married woman quashed, because it doth not say that her husband was beyond sea forty weeks — 310
Though the husband is in England, yet if no access can be proved, the issue are bastards——If no access of the husband be adjudged, the issue are bastards — 311
The wife may be admitted as an evidence to bastardize her own child, begotten during her marriage, but she shall not give evidence of any other fact relating to it, which can be proved by any other person 312
Report of the preceding case from a manuscript 313
Wife's evidence admitted in an order of bastardy 315
But the evidence of the wife alone is not sufficient to prove no access in the husband, in order to make a settlement for the issue as bastards 316
Child begotten after divorce *a mensa et thoro*, shall be taken to be a bastard; otherwise after voluntary separation, unless found that the husband had no access — 317
A widow being delivered 40 weeks and nine days after her husband's death, child adjudged illegitimate 317, 318
The marriage of a pauper being contrary to 21 Geo. 2. c. 33. sect. 11. the man being under age and not, &c. was holden to be absolutely void; and therefore the woman, &c. could not be removed to his settlement — 319
Stat. 18 Eliz. c. 3. A provision for the keeping of bastards——Farther provision relating hereto, 7 Jac. 1. c. 4. — 320
Stat. 7 Jac. 1. c. 4. The punishment of lewd women who have bastards — 321
Stat. 21 Jac. 1. c. 27. It shall be murther for a mother to conceal the death of her bastard child 321
Stat. 13 & 14 Car. 2. c. 12. Putative fathers of bastard children running away, how to be proceeded against — 322
Stat. 6 Geo. 2. c. 31. After 24 June 1733, the person charged on oath of being the father of a bastard child, may be immediately apprehended, and committed to prison, unless he give security 322, 323
Such person on the woman's miscarriage, &c. shall be discharged——The justices, on prisoner's request, may summon the overseers, &c. and if no order be made within six weeks after the woman's delivery, prisoner to be set at liberty 323
The woman not to be examined relating to her pregnancy, till one month after her delivery——Order of session appeal from an order of bastardy made by two justices is final and conclusive 324

No

No appeal lies from an order of baſtardy made at the quarter ſeſſions ——— 325
The juſtices of the ſeſſions have power and authority originally, to make any order in the caſe of baſtardy ——— 326
The juſtices in ſeſſions have no power to commit a perſon for diſobeying an order made by them on appeal from an order of baſtardy made by two juſtices ——— 327
A woman having two baſtards ſhall not be proceeded againſt upon the ſtat. 7 Jac. 1. c. 4. as for her ſecond offence, not having been puniſhed for her firſt offence———Order of two juſtices to pay ſo much a week to the pariſh until the child ſhould be twelve years of age, not good, becauſe the father may maintain it ——— 328
Order to pay ſo much a week till the child ſhould be able to get his living by working, not good; becauſe the father may take and maintain the child himſelf———Action brought on bond to indemnify pariſh from a baſtard child———Pariſh not damnified when the father offers to maintain his baſtard child ——— 329
The right way to make an order of baſtardy is, "ſo long as the child ſhall be chargeable"——— Father may maintain the child himſelf 330
An information denied againſt a juſtice who made an order without ſummoning the party, becauſe the order, though in nature of a judgment, is yet not ſtrictly a conviction ——— 331
Seſſions may make an original order———Report of the preceding caſe from a manuſcript 332
Information moved for againſt juſtices, for making an order of baſtardy on a perſon, upon pretence that he was not ſummoned; but the contrary appearing, it was denied ——— 334
Marriage doth not exempt the mother of a baſtard child from contributing towards his maintenance—Order of baſtardy quaſhed, being made three years after appeal ——— 334
Order of baſtardy charges the father, though he has been run away fourteen years——Before ſtat. 26 Geo. 2. c. 27. there muſt have been a quorum in an order of baſtardy by borough juſtices——— Two juſtices cannot acquit a man charged with a baſtard ——— 335
A baſtard is within the ſtatute of P. & M.——— A baſtard is intended to be born where the order ſtates him to be baptized———Baſtard of a certificate perſon is ſettled where born—When a wife marries a ſecond huſband, and it is found the firſt had no acceſs to her for a long time, the children of the ſecond marriage are baſtards, and the wife's ſettlement where the firſt huſband's was 336
Where an order of baſtardy is made originally at ſeſſions (as it may) 2. if a ſummons ſhould not be ſet out ——— 337
Where a woman with child of a baſtard is removed from A. to B. and privately returns to A. and is there delivered, the ſettlement of the baſtard is in B.——Baſtard chargeable only where born——— The ſex of the baſtard muſt be ſpecified in an order———Where two juſtices have made an order, the ſeſſions have no juriſdiction, but upon appeal——After defendant is diſcharged at ſeſſions, a new order of baſtardy cannot be made 338
Order to provide for baſtard till nine, good——— That the huſband was abſent ſix years, and defendant had knowledge of the wife, no good ground for order of baſtardy—Order of maintenance does not determine the ſettlement of a baſtard——— Two juſtices, on application to them out of ſeſſions, on hearing all parties, adjudged that A. is not the reputed father of the baſtard, charged upon him by the oath of the woman, but held by the court, that this would ſcreen A. from being charged with an order by other two juſtices 339, 340
Upon motion to quaſh an order of baſtardy, the reputed father muſt be preſent in court——Order of baſtardy ill, becauſe examination by one juſtice only ——— 341
Money for maintenance of a baſtard may be ordered to be paid to the overſeers——Order quaſhed, becauſe the words of adjudication were in the ſingular number inſtead of the plural———By 18 Eliz. c. 3. ſeſſions proceed on recognizance———By 3 Car. 1. may commit——If a man is adjudged by two juſtices the reputed father of a baſtard, and ordered to pay, and on appeal the order is confirmed, the juſtices at the ſeſſions cannot commit for non-payment, but muſt proceed on the recognizance taken by the two juſtices — 342
Original proceedings at ſeſſions—Order to ſeize the goods of the reputed father of a baſtard, &c.—— Order cannot be made for ſecurity till after contempt——Concealing the death of a baſtard child 343
Giving a potion to cauſe abortion — 344
Battery. See **Aſſault and Battery.**
Bawdy-houſe. See **Lewdneſs.**
Beer. See **Exciſe.**
Behaviour. See **Surety.**

Bent.

Stat. 15 Geo. 2. c. 33. Penalty for cutting bent from the ſandhills—Penalty on ſecond offence—— Penalty on having bent in cuſtody———Proviſo 345, 346

Bigamy. See **Polygamy.**
Billets. See **Fuel.**

Black Act.

Stat. 9 Geo. 1. c. 22. Perſons diſguiſed and in arms appearing in foreſt, &c. and killing deer, &c. deemed felons —— — 347
Sending letters without a name, &c. and demanding money, &c. felony—Such perſons when to ſurrender themſelves, &c.—— Who intitled to pardon 348

Juſtices to return informations to a ſecretary of ſtate, who is to lay the ſame before the king and council, who may make an order for their ſurrender—— Perſons not ſurrendering themſelves purſuant to ſuch order, are deemed to be convicted, &c.—— Perſons abetting them, &c. deemed felons 349
Offenders apprehended within the time limited by order of council, ſhall be tried according to law— Hundred chargeable for damage ſuſtained in maiming cattle, &c. — — 350
Perſons injured to give notice within two days after the offence committed———And to be examined within four days after notice, touching their knowledge of the offenders———Hundred not liable, if the offender is convicted within ſix months, &c. ———Action to be commenced within a year after the offence———Juſtices may iſſue warrants to ſearch for ſtolen veniſon———Perſons killed or wounded in apprehending offenders, how to be rewarded —— 351
Proſecutions may be commenced within 3 years after offence committed——Such offences may be tried in any county—Attainder not to work corruption of blood, &c.———This act, where to be read 352
Stat. 6 Geo. 2. c. 37 Maliciouſly deſtroying banks of rivers, &c. felony without clergy——Maliciouſly cutting hop binds, felony without clergy, 9 Geo. 1. c. 22.——Continued by 10 Geo. 2. c. 32.——Made perpetual by 31 G. 2. c. 42. 353
Stat. 27 Geo. 2. c. 15. Perſons convicted of ſending threatening or incendiary letters, or of reſcuing perſons in cuſtody for ſuch offences, to ſuffer death 354

Black Lead.

Stat. 25 Geo. 2. c. 10. Entering any mines of black lead with intent to ſteal, or the aſſiſting or hiring perſons to do ſo, deemed felony; and the offenders to be committed for a year, and publickly whipt; or to be tranſported for ſeven years; and if they eſcape from priſon, or return from tranſportation, to ſuffer death — — 354, 355
Certificate of the former conviction deemed ſufficient proof thereof——Receivers of lead, knowing ſuch to be ſtolen, guilty of felony — — 356

Blaſphemy and Profaneneſs.

What is blaſphemy, and how puniſhed 356
Stat. 3 Jac. 1. c. 21. Penalty on players profanely abuſing the name of God — 357
Perſon denying the Trinity to have no benefit of the toleration act — — ibid.
Stat. 9 & 10 Wil. 3. c. 32. Perſons denying the trinity, or aſſerting that there are more gods than one, or denying the Chriſtian religion being true, &c. being convicted thereof, diſabled to hold any office, &c. — — ibid.
Further diſabilities, if a ſecond time convicted thereof —No proſecution unleſs information be given in four days after words ſpoken——Perſon for the firſt offence, (on renouncing his opinion in four months after conviction) ſhall be diſcharged from penalty ——Chriſtianity is part of the law — — 359
An obſcene book is puniſhable as a libel againſt religion and morality — — ibid.

Books.

Juſtice to grant warrant to ſearch for books ſtolen out of any parochial library —— 362
Bows. See Game.
Brandy. See Exciſe.

Bread.

Preamble reciting act 51 Hen. 3. and 8 Ann.—Recited act of 8 Ann. and other acts ſubſequent and relating thereto, continued to 29 September 1758; from which time ſo much of the act 51 Hen. 3. as relates to the aſſize of bread, and act 8 Ann. and other acts continuing, or amending the ſame, are repealed — — 362, 363
General ordinance for ſetting an aſſize and price of bread———Aſſize to be regulated by the price the grain, meal, or flour bears in the market, and the profit to be allowed to the baker——— Where an aſſize ſhall be ſet, no ſort of bread (wheaten and houſhold excepted) other than what is thereby allowed, is to be made for ſale; under penalty of forfeiting not exceeding 40 s. nor leſs than 20 s.
Aſſize and price of bread to be ſet according to the two following tables, marked No. I. and No. II. 364
Aſſize to be ſet in Averdupoize weight, and in the proportions directed by the tables, for the ſeveral ſorts of bread———Return to be made weekly to the court of mayor and aldermen of London, by the meal weighers, of the prices which the ſeveral kinds of grain, meal, and flour, fit for bread, publickly ſell for in the markets of the city: the prices to be entered by them on a certain day in a book to be kept in the town-clerk's office; and the aſſize and price of bread to be ſet the next day; and to take place according to order, and continue till a new aſſize be ſet, and to be publiſhed forthwith 370, 371
Before any advance or reduction be made in the price of bread, the meal weighers are to leave at the bakers hall, a copy of the returns made that day, that the company may have time to object thereto before the aſſize is ſet —— 371
The court of mayor and aldermen, and magiſtrates, &c. in other cities, towns, and boroughs, may, in like manner, cauſe returns to be made them of the prices which the ſeveral ſorts of grain, meal, and flour, fit for bread, ſhall be publickly ſold at in the markets within their juriſdictions; the prices to be

entered and certified in a proper book; and the aſſize and price of bread to be ſet within two days after; and to take place, and continue (not exceeding ſeven days) and to be publiſhed, as the court or magiſtrates ſhall direct 371, 372
Two or more juſtices within their juriſdictions, may ſet an aſſize of bread; and cauſe returns to be made by the clerks of the neighbouring markets, of the price at which grain, meal, and flour, ſhall be there ſold; the return to be made on a certain day, and to be entered and ſigned in a book to be kept for that purpoſe; the aſſize and price of bread to be ſet within two days after, and to continue (not exceeding fourteen days) and to be commenced and publiſhed as ſhall be ordered — 372, 373
Bakers may ſee the returns, the day after the ſame ſhall be made, that they may have time to object to the advance or reduction to be made in the price of bread, before the aſſize be ſet——Baker not liable to pay fees on account of the aſſize of bread—Form of the returns to be made of the price of grain, meal, or flour — 373
Returns to be ſigned——Form of publication of the aſſize of bread — 374
Half peck, and quartern loaves, to weigh, and be ſold, in due proportion to the peck loaf——Magiſtrates to direct how the aſſize of rye, barley, or mixed bread, when ordered to be made, ſhall be publiſhed——Where bread of a certain denomination and value ſhall be ordered, or allowed to be made, no bread of a different denomination is to be ſold at the ſame time, under penalty of forfeiting not exceeding 40s. nor leſs than 20s. for ſuch offence — — 375
The juſtices at a general or quarter ſeſſions, may fix the juriſdiction of any hundred or place within a certain diſtrict, ſo as the aſſize of bread ſet for the ſame may extend thereto — 375, 376
Entry to be made by every clerk of the market, &c. in proper books, of the return made by him, and of the rate the aſſize and price of bread ſhall be ſet at from time to time; the ſaid books to be open to the inſpection of any inhabitant——No alteration is to be made in aſſize of bread, unleſs the price of wheat, or other grain, ſhall vary 3 d. in the buſhel from the laſt return. — 376
Any meal weigher, clerk of the market, &c. who ſhall neglect his duty, or make a falſe return, and any peace officer, who ſhall diſobey the warrant of any magiſtrate, or juſtice, or otherwiſe neglect his duty, forfeit not exceeding 5 l. nor leſs than 20 s. ——Any buyer, ſeller, or dealer, who ſhall refuſe to diſcloſe to the meal weigher in London, or clerks of the markets, &c. in other places, the true prices the ſeveral ſorts of grain, meal and flour, ſhall be bought or ſold at in the public market, or ſhall give in a falſe or colluſive price, forfeit not exceeding 10 l. nor leſs than 40 s. 376, 377
Where any falſe return ſhall be ſuſpected to be made, the court, magiſtrate, or juſtice, may, within three days, ſummon any buyer or ſeller, or other perſon likely to give information, and examine them upon oath, touching the prices of grain, meal and flower, within ſeven days before; and any perſon who ſhall not appear thereto, without juſt cauſe ſhewn, or ſhall refuſe to give evidence, forfeits not exceeding 10 l. nor leſs than 40 s.——And forſwearing himſelf, incurs the penalties of perjury.——Party ſummoned, not obliged to travel above five miles from the place of his abode 377, 378
When an order ſhall be made for making bread for ſale of any other grain than wheat, or of mixed meal or flour, bakers to conform to ſuch order, and make the bread of ſuch weight and goodneſs, and at ſuch price as ſhall be therein directed, on penalty of forfeiting not exceeding 5 l. nor leſs than 40 s. 378, 379
The ſeveral ſorts of bread made for ſale are to be always well made, and, in their degrees, according to the goodneſs of the ſorts of meal or flour the ſame ought to be made of, without any adulteration or mixture except the genuine meal or flour, ſalt, water, eggs, milk, yeaſt and barm, or ſuch leaven as ſhall be occaſionally allowed, upon penalty of the offender forfeiting (not being the ſervant or journeyman) not exceeding 10 l. nor leſs than 40 s.——or being committed, and kept to hard labour for any time not exceeding one month, nor leſs than ten days; and if the offender be a ſervant or journeyman, on penalty of his forfeiting not exceeding 5 l. nor leſs than 20 s. or being committed and kept to hard labour for any time not exceeding one month, nor leſs than ten days; and the magiſtrate may, out of the money of the forfeiture, publiſh in ſome news-paper the offender's name, place of abode, and offence—The penalty of adulterating corn, meal or flour, whether at the time of grinding, dreſſing, bolting, &c. or of ſelling the meal or flour of one ſort of grain for another ſort; or any thing mixed, which ſhall not be of the genuine meal or flour of the grain the ſame is ſold for; is not to exceed 5 l. nor be leſs than 40 s.——Where bread ſhall be of a different mixture of corn than what it importeth to be of, or is allowed, or where the proportion of the mixture allowed of ſhall not be duly obſerved, or where any thing ſhall be ſold as flour, which is not genuine, the offender is to forfeit not exceeding 5 l nor leſs than 20 s. — 379, 380
Where bread ſhall be made under weight, the offender forfeits not exceeding 5 s. nor leſs than 1 s. for every ounce deficient; and if under an ounce, not exceeding 2 s. 6 d. nor leſs than 6 d.——provided ſuch bread complained of, if in any city, town corporate, or borough, be weiged before the magiſtrate, within twenty four hours after the ſame ſhall be baked, ſold, or expoſed to ſale; and if in any hundred

hundred, riding or diviſion, &c. within three days of the baking, or ſale thereof; unleſs ſuch deficiency aroſe from ſome unavoidable accident, or by contrivance or confederacy — 381

All bread made for ſale, is to be fairly marked; the wheaten bread with a large Roman W, and houſehold with H, in order to aſcertain under what denomination it was made, and ought to be weighed; under penalty not exceeding 20s. nor leſs than 5s. ——Baker demanding or taking a higher price for bread, than what the ſame ſhall be ſet at by the aſſize; or refuſing to ſell to any perſon any of the ſorts allowed or ordered to be made, when he ſhall have more than is neceſſary for the immediate uſe of his family or cuſtomers, forfeits not exceeding 40s. nor leſs than 10s. — 381, 382

Bread of any inferior quality to wheaten, is not to be ſold at a higher price than houſhold bread is ſet at, on penalty of 20s.——Magiſtrates, juſtices, or peace officers, properly authorized, may enter in the day time the houſes, ſhops, &c. of bakers, and ſearch for, and weigh, the bread therein; and may ſeize ſuch as ſhall be found wanting in goodneſs, due baking or weight, or not properly marked, or of any different ſort than is allowed of, and diſpoſe thereof at their diſcretion. 383

Where any miller, mealman or baker, ſhall be ſuſpected of adulterating meal or flour, the magiſtrate, &c. upon information made thereof on oath, may enter the premiſſes of ſuch ſuſpected perſon himſelf, and make ſearch, or may grant a ſearch warrant to ſome peace officer, and ſuch meal and flour as ſhall be deemed to have been adulterated, may be ſeized, together with the baſe mixtures and ingredients; and if ſeized by a peace officer, it is to be carried before a magiſtrate; if ſeized by the magiſtrate, or adjudged by him to be adulterated, he may diſpoſe thereof as he thinks proper; and the miller, mealman or baker, in whoſe premiſſes ſuch mixture or ingredients ſhall be found, and adjudged to be intended to be uſed in adulterating, is to forfeit, upon conviction, not exceeding 10l. nor leſs than 40s. unleſs it may be made appear, that the ſame were not lodged there with ſuch intention, but for ſome other lawful purpoſe; and part of the forfeitures may be applied in publiſhing the offender's name, place of abode, and the offence 383, 384, 385

Perſons obſtructing or oppoſing any ſearch or ſeizure as aforeſaid, are to forfeit not exceeding 5l. nor leſs than 40s.——Any miller, mealman or baker, preſuming to act as a magiſtrate or juſtice in the execution of this act, forfeits 50l. to the informer ——Method of recovery 385

Where any baker ſhall, on complaint, make it appear, that the offence he was charged with, and paid the penalty of, was occaſioned by the wilful default of his journeyman or ſervant, the magiſtrate ſhall iſſue his warrant for apprehending the party; and upon conviction of the offence, ſhall decree a reaſonable recompence to be paid to the maſter; and on nonpayment thereof, ſhall commit the offender, to be kept to hard labour, for any time not exceeding one month, unleſs payment be ſooner made — 385, 386

All offences againſt this act may be heard and determined in a ſummary way, by magiſtrates within their reſpective juriſdictions——Offenders may be ſummoned, and not appearing thereto, or offering a reaſonable excuſe, may be apprehended——— Matter of the complaint to be inquired into upon oath, and examination of witneſſes; and the party to be convicted or acquitted thereupon——The penalty on nonpayment thereof within 24 hours, is to be levied by diſtreſs and ſale; and if the goods and chattels of the party ſhall be removed into another juriſdiction, the magiſtrate thereof is to back the warrant of diſtreſs; and the diſtreſs, if not redeemed within five days, is to be appraiſed and ſold, and all charges, after ſettled by the magiſtrate, to be deducted thereout; and for want of diſtreſs the offender is to be committed for one month, unleſs payment be ſooner made 386, 387, 388.

Power to ſummon material evidences, and of compelling, by warrant, to appear, ſuch as ſhall not appear upon ſummons — 388

Witneſs to be examined on oath; and on refuſal without juſt cauſe ſhewn, may be committed for 14 days, but not leſs than three——Conviction to be drawn up in the following form——No conviction, or other proceedings, may be removed by certiorari, &c.——Perſons aggrieved by the judgment of any magiſtrate or juſtice, may appeal to the next general quarter-ſeſſions, and execution of judgment is to be thereupon ſuſpended——Appellants to enter into recognizance, and give ſecurity to proſecute the appeal with effect, &c.—— And the juſtices in their ſaid ſeſſions are to hear and determine the matter thereof, and award coſts thereupon. —— 388, 389

If the former judgment be affirmed, the appellant is to pay down the forfeiture and coſts, and on default to be committed 390

If the judgment be reverſed, and the appellant be diſcharged of the conviction, coſts are to be awarded and recovered againſt the informer——If the conviction ſhall happen to be within ſix days of the ſeſſions, appeal may then be made to the ſeſſions following ——— Limitation of actions againſt magiſtrates, and juſtices of peace and officers —Act of 24 Geo. 2. extended to magiſtrates and juſtices acting under authority of this act 390

Seven days notice to be given to peace officers, before the iſſuing out any action againſt them——— Notice to contain the name and abode of the proſecutor, and his attorney, and cauſe of action——— Officer may thereupon make tender of amends; and plead the ſame, together with the general iſſue, &c. in bar of ſuch action——Defendant recovering, to be allowed his coſts——Plaintiff recovering

covering, intitled to damages and coſts—Perſons ſued on this act, may plead the general iſſue, and obtaining a verdict, recover treble coſts 391

Proſecution to be commenced within three days after the offence———General reſervation of rights—Reſervation of the rights of the dean and high ſteward of Weſtminſter, to ſet an aſſize of bread, within the city and liberty of Weſtminſter, and puniſh any breach thereof———Reſervation of rights to the univerſities of Oxford and Cambridge, to ſet an aſſize of bread within their juriſdictions; and puniſh any breach thereof — 391, 392

Diſtribution of the unappropriated penalties and forfeitures under the ſaid act; viz. one moiety to the proſecutor, where the offender ſhall be convicted by oath, or confeſſion; and the other moiety, with the penalties, on weighing, trying, or ſeizure of bread, by a magiſtrate, to ſuch purpoſes as the magiſtrate ſhall think fit —— 393

Stat. 3 Geo. 3. c. 11. After 1 May 1763, no aſſized and priced bread to be made at the ſame time in the ſame place, upon penalty of forfeiting not exceeding 40s. nor leſs than 10s.———Juſtice, at any general, quarter, or petty ſeſſion, may appoint which of the ſorts of aſſize or priced loaves, and what other ſorts of bread, and of what grain, ſhall be made for ſale, they cauſing an entry to be made of ſuch orders; which is to be free for inſpection; and a copy thereof to be ſet up in ſome market, or other publick place, or publiſhed in the country news papers —— 394, 395

The only ſorts of aſſize bread made of wheat which ſhall be allowed———A like proportion, as to weight, is to be kept between the white and wheaten bread, and the wheaten and houſhold aſſize bread; viz. on penalty of forfeiting, not exceeding 40s. —— 395

A proportion in the price is to be kept in the peck-loaf, and half peck, and its other ſubdiviſions, both in the wheaten and in houſhold bread; and the houſhold is to be one fourth cheaper than the wheaten; on penalty of forfeiting, not exceeding 40s. nor leſs than 10s.———The weight of the peck loaf, and its ſubdiviſions, are to weigh, in every ſort of bread which ſhall be made for ſale, viz. on forfeiture not exceeding 5s. nor leſs than 1s. for every ounce wanting in the weight; nor exceeding 2s. 6d. nor leſs than 6d. for all under one ounce; the ſame to be weighed before a juſtice, within twenty-four hours after being baked, ſold, or expoſed to ſale, &c. if within any city, town corporate, &c. or within the bills of mortality; and in other places, within three days; unleſs ſuch deficiency ſhall be ſatisfactorily accounted for 396, 397

Bread of an inferior quality to wheaten, not to be ſold at a higher price than the houſhold; on forfeiture, not exceeding 20s.———A large Roman (W) to be imprinted on all wheaten bread for ſale; and a large Roman (H) on all houſhold bread: on penalty of forfeiting not exceeding 40s. nor leſs than 10s. unleſs ſuch omiſſion ſhall be ſatisfactorily accounted for —— 397

Bread made of any other grain than wheat, to be impreſſed with ſuch letter as the juſtices ſhall order; they cauſing an entry to be made of ſuch order; which is to be free for inſpection; and a copy thereof to be ſet up in ſome market or other public place, or publiſhed in the country news-papers 398

Where the juſtices neglect to make ſuch order, the maker is to mark every ſuch loaf with two diſtinct capital letters; on penalty of forfeiting not exceeding 40s. nor leſs than 5s. for every ſuch unmarked loaf —— 398, 399

Juſtices, and peace-officers (authorized by warrant of a juſtice) may enter the houſes of bakers, and ſearch for, examine, and weigh all bread made for, or expoſed to ſale, &c.——And bread found defective in the weight, or not only marked, or wanting in due baking, or goodneſs, or being fraudulently mixed, &c. may be ſeized and given to the poor; unleſs ſuch default ſhall be ſatisfactorily accounted for; and the maker and ſeller ſhall alſo forfeit not exceeding 5l. nor leſs than 20s. for every ſuch offence; unleſs the default ſhall be ſatisfactorily accounted for———Penalty of epoſing any legal ſearch, view, weighing, trying, or ſeizing of bread, is not to exceed 40s. nor be leſs than 20s.———No miller, mealman, or baker, may act as a juſtice in the execution of this act, on penalty of 50l. —— 399, 400

Baker making it appear, that any offence for which he ſhall have paid the penalty, was occaſioned by the neglect or default of his ſervant; Juſtice to iſſue his warrant out for bringing the offender before him; and on conviction, order a ſum to be paid by way of ſatisfaction; and on non-payment thereof, is to commit ſuch ſervant to hard labour, for any time not exceeding one month; unleſs payment be ſooner made — 401

Juſtices to hear and determine all offences againſt this act in a ſummary way——And the penalties to be paid within twenty-four hours after conviction, or to be levied by diſtreſs and ſale——Warrant of diſtreſs may be backed —— 402

Diſtreſs to be ſold within five days; and all charges to be deducted thereout——For want of ſufficient diſtreſs, the offender to be committed———Form following to be obſerved in convictions in England ———Form in Scotland to be as for other offences of the like nature——No conviction, &c. to be removed by certiorari —— 402, 403

Perſons aggrieved by the judgment of a juſtice, may appeal to the quarter ſeſſions; entering into a recognizance, with ſureties to proſecute the appeal—Juſtices at the quarter-ſeſſions to hear and determine the matter of ſuch appeal, and award coſts—

On

On the appeal being affirmed, the appellant may be committed till payment of the coſts, or compoſition be made——If the appellant make good his appeal, reaſonable coſts to be awarded him 403, 404
Where there is not ſufficient time between the conviction and ſeſſions, appeal may be made to the ſecond quarter-ſeſſion——Limitation of actions brought againſt juſtices, and peace-officers——Act 24 G. 2. extended to juſtices acting under this act——Notice to be given to peace-officers, before any writ be ſued out againſt them; and if tender of amends be made by them, and the ſame ſhall be found to have been ſufficient, &c. a verdict to be found for them with coſts——Plaintiff recovering, intitled to damages and coſts 404, 405
Limitation of actions——General iſſue——Double coſts——Limitations and remedies for rendering juſtices, peace officers, and other perſons, ſafe in their duty, extended to Scotland——Limitation of proſecution for offences againſt this act——Penalties and forfeitures how to be recovered and applied — 406
Right of the two univerſities reſerved 407
Breaking gaol. See Priſon Breaking.
Breaking open doors. See Arreſt.

Brewers.

Stat. 2 & 3 Ed. 6. c. 15. Victuallers conſpiring to ſell their victuals but at certain prices, and labourers conſpiring touching their works, ſhall be puniſhed —— 407
The puniſhments of labourers conſpiring the time or manner of their work —— ibid.
A conſpiracy by a ſociety or company of victuallers, ——Which magiſtrates may enquire of, and puniſh offenders—— The price of ſtrong beer and ale may be reaſonably advanced without ſubjecting the offender to proſecution —— 408
1 col. penalty for uſing melaſſes in brewing 409
Stat. 10 & 11 W. 3. c. 21. Penalty on brewing, uſing melaſſes, &c.——Penalty on brewers ſervants —— ibid.
Stat. 9 Ann. c. 12. Brewers, &c. not to uſe broom, &c. on pain of 2 l. — ibid.
Exception——Brewers, inn-keepers, diſtillers or dealers in ſpirits, &c. not to act as juſtices relating to the diſtillery — 410
Indictment againſt a brewer for knowingly ſelling and delivering ſixteen gallons of amber beer as and for eighteen gallons, and receiving the price for eighteen gallons, with intent to deceive and defraud; judgment was arreſted; for this is not an offence indictable, but a civil injury to a private individual, owing to that private perſon's own careleſſneſs; a mere non-performance of contract 410, 411, 412, 413, 414

Bribery.

Definition of bribery —— 414
Stat. 12 Ric. 2. c. 2. None ſhall obtain offices for reward —— 415
Stat. 5 & 6 Ed. 6. c. 16. Penalty for buying or ſelling ſome ſort of offices —— ibid.
The bargains and aſſurances ſhall be void——To what offices this ſtatute ſhall not extend 416
Acts done by an officer removable ſhall be good——A bargain for an office before the firſt day of March, &c.——Offices given by the two chief juſtices, or juſtices of aſſize excepted 417
Bribery, how puniſhable — 418

Bridges.

Who are bound to repair bridges — 418, 419
Stat. 9 Hen. 3. c. 15. Concerning the making of bridges and banks —— 419
Stat. 22 Hen. 8. c. 5. A remedy to repair decayed bridges in highways, and by whom——Juſtices of peace may award proceſs againſt them who ought to repair bridges —— 420
The juſtices may tax the inhabitants with the aſſent of the conſtables——By 1 Ann. ſtat. 1. c. 18. ſeſſions of the peace may tax the ſeveral townſhips, &c.——Two collectors of every hundred——The juſtices ſhall appoint two who ſhall repair the bridge——The collectors and ſurveyors ſhall account to the juſtices —— 421
The juſtices may make proceſs into every ſhire againſt offenders——Sheriffs, &c. ſhall ſerve proceſs upon the offenders; the five ports excepted——Allowance made to the ſurveyors and collectors 422
An order for the amending of the ways at the ends of bridges——22 H. 8. c. 5. concerning the amending of bridges —— 423
Further continued —— 424
For collecting money for repair of decayed bridges, juſtices of peace may aſſeſs every town, &c. in proportion——Aſſeſſments how to be levied, &c. ——Treaſurers to be appointed, and monies how employed — 424
On non-payment, to be levied by diſtreſs——Penalty on conſtable, &c.——Fines, &c. to be paid to the treaſurer——Matters concerning repair of bridges, &c. where to be determined——Juſtices to allow 3d. in the pound, &c.——General iſſue 425
Perſons and things exempted——Penalties how to be levied —— 426
Stat. 12 Geo. 2. c. 29. No repair of bridges, &c. but upon preſentments of the grand jury ibid.
Juſtices to contract with perſons for publick repairs, upon publick notice —— 426, 427
Stat. 14 Geo. 2. c. 33. Juſtices at their quarter-ſeſſions may purchaſe lands to build county bridges——Certiorari may be granted where private perſons

are charged to repair a bridge——Tenant at will is obliged to repair a house adjoining to a common bridge ——— 427, 428
Information will not lie against a lord of a manor who is bound to repair a bridge, without saying ratione tenuræ, or shewing a prescription —— 429
A mandamus to make a rate for repair of a bridge must be directed to the justices of peace of the county, and not to the justices of a particular liberty 430, 431
The king by letters patents may enlarge the boundaries of a city——The court of King's Bench has a concurrent jurisdiction with the sessions about repairing bridges —— 432 to 438

Buggery.

Definition of buggery —— 437
Stat. 25 Hen. 8. c. 6. He that committeth buggery with mankind, or beast, shall be adjudged a felon 438

Bullion. See Coin.

Burglary.

What is burglary ——— 440
Commentary on the several parts of the definition or description of burglary —— 441—445
Stat. 24 Hen. 8. c. 5. There shall be no forfeiture of lands or goods for the killing of any person that attempted to murder or rob —— 446
Stat. 18 Eliz. c. 7. None shall have clergy that committeth rape or burglary——No man allowed his clergy shall be committed to the ordinary, but presently delivered——The justices may retain offenders in prison for a time——To know a woman carnally, under the age of ten years, shall be felony———He that is allowed his clergy, shall answer to other felonies — 446, 447
Stat. 3 W. & M. c. 9. Any person convicted of robbing a dwelling house wherein there is any or no person, &c. or standing mute, shall lose his clergy 447
Stat. 10 & 11 W. 3. c. 23. Person stealing goods in any shop, warehouse, &c. of 5s. value or more, or assisting therein, excluded from benefit of clergy—Prosecutor of felon to have a certificate 448
In case of dispute, judge to appoint the certificate into shares———Altered by 6 Geo 1. c. 23. s. 8. By 5 Ann. c. 31. s. 1. Apprehenders of burglars and house-breakers have a further reward of 40l. ——Certificates may be once assigned——Assignee discharged from parish and ward offices——Certificate to be inrolled———If persons be slain in pursuit of house-breakers, &c. executor to have the certificate, without fee———House-breakers, &c. discovering two or more felons, intitled to the king's pardon, good; and to be a bar to appeal 449, 450
Persons convicted of theft or larceny, instead of burning in the hand, to be burnt in the left cheek in open court———Repealed by 5 Ann. c. 6. s. 1. ———Evidence to pay no fee, &c.———Fee for bill of indictment———Clerk of assize, &c. drawing defective bill, to draw a new one gratis——— Penalty ——— 450
Stat. 5 Ann. c. 31. Apprehenders of burglars or felons, &c. to have 40l. over and above the rewards by 10 & 11 W. 3. c. 23.———Payable by sheriff of county———Justices in case of dispute, to direct in their certificate how reward shall be paid ——— 450, 451
Watchman, or other killed in pursuit of house-breaker, &c. his executor, &c. entitled to the 40l.——— By 3 Geo. 1. c. 15. s. 4. sheriffs may apply to the treasury without charging this money in their accounts, ——Sheriffs to deduct monies so paid on their accounts, and be repaid by the lord treasurer ——Felon, &c. discovering two or more felons, shall on conviction be intitled to reward, and be pardoned——Buyers or receivers of stolen goods, &c. made accessaries, &c. ——— 452
If principal felon cannot be taken, accessary to be tried as for a misdemeanor———Judges, &c. to settle the rights and shares of persons to the certificate, &c. ——— 453
Stat. 3 Geo. 1. c. 15. After 9 July 1717, sheriff not obliged to charge money for apprehending highway-men, or for preventing the counterfeiting, &c. of the coin, or for apprehending house-breakers; but may on the judge's certificate of the conviction, and receipt of the party entitled to the reward, apply to the lord treasurer, &c. who shall pay him the sum disbursed without fee 454
Stat. 6 Geo. 1. c. 23. Reward of 40l. for convicting a burglar shall be paid without deduction.
Stat. 25 Geo. 2. c. 36. In prosecutions for felony, court may make orders for payment of the prosecutor's expences———Clerks fee for such order ———County treasurers to pay the order 455
Stat. 27 Geo. 2. c. 3. The charges of attendance to be allowed by the court to poor persons bound to give evidence against felons———6d. to be paid to the officer for making out the order ibid.
In Middlesex the overseers of the poor of the parish where the offender was taken, to pay all such charges———Certificate of having apprehended, prosecuted and convicted a felon, under 10 & 11 W. 3. c. 23. s. 2. is assignable over, once and no more; provided it has not been used before: it exempts from all parish and ward offices within the parish or ward wherein the felony was committed; but will not serve to exempt the constable of a manor, which comprehends the whole town and parish where the felony was committed, and more — 456 to 459

Burning.

Definition of burning, and explanation thereof, 460.

Burning a houſe whereof one is in poſſeſſion by virtue of a leaſe for years, is not felony — 461
Stat. 23 Hen 8. c. 1. Clergy not allowed to any perſon under a ſub-deacon committing treaſon — The promiſe of the clergy to the king for the ſafe keeping of notorious offenders convicted without purgation — — 464, 465
The ordinary's abuſe in ſuffering notorious felons to make purgation——Clergy taken from ſeveral perſons which do commit divers offences—— Extended to counties where the robbery, &c. was not committed——Extended to robberies in booths or tents, &c. — 465
None within holy orders, convict of murder, &c. ſhall make purgation; unleſs he become bound with ſureties for his good abearing——Of what eſtate the ſureties ſhall be——He that is attaint of felony ſhall not make his purgation——An ordinary may degrade a convict, and ſend him to the King's Bench —— 466
Stat. 25 H. 8. c. 3. Clergy not allowed to thoſe who ſtand mute, or who do make peremptory challenge——Certain defects in the ſtatute of 23 Hen. 8. c. 1.
Caſes in which the benefit of clergy ſhall not be allowed—A man attainted where the goods were carried which were ſtolen in another country 468
Stat. 1 Ed. 6. c. 12. Statute concerning treaſons, &c. repealed——Sometimes ſharp, and ſometimes milder laws be made, according to the people's inclinations —— 469
All ſtatutes made ſithence the firſt year of H. 8. to make any thing felony, repealed 470
Stat. 5 & 6 Ed. 6. c. 10. Such as rob in one ſhire, and fly into another, ſhall not have their clergy, 470
Wherein the ſtat. made 1 Ed. 6. c. 12. doth take away the force of the ſtat. of 25 H. 8. c. 3. 471
The ſtat. of 25 H. 8. c. 3. ſhall ſtand in force, notwithſtanding a clauſe comprized in the ſtat. of 1 Ed. 6. c. 12. —— 472
Stat. 4 & 5 Phil. & Mar. c. 4. Acceſſaries in petty treaſon, felony, murder, ſhall not have their clergy —— — 472
Trial of a lord by his peers —— 473
Lord Hale's obſervations on the preceding acts of 23 Hen. 8. c. 1. 25. Hen. 8. c. 3. 1 Ed. 6. c. 12. 5 & 6 Ed. 6. c. 10. and 4 & 5 Phil. & Mar. c. 4. —— 473—476
Stat. 37 H. 8. c. 6. burning a laden cart or firewood 476
Stat. 43 Eliz. c. 13. Several outrageous miſdemeanors committed in Cumberland, &c. 476
Carrying away or detaining any perſon againſt his will——Aſſenting or aiding to the taking or detaining of any perſon——Receiving or carrying of black mail——Giving of black mail for protection——Burning of barns or ſtacks of corn ——The aforeſaid offences ſhall be felony, without clergy, &c.——The names of all outlaws ſhall be declared to the ſheriff——Proclamation of the outlaws —— 476, 477
The puniſhment for relieving or conferring with an outlaw for felony——The enquiry and puniſhment of the offenders——The authority of the lords wardens ſhall not be impeached 478
Stat. 22 & 23 Car. 2. c. 7. Felony for wilfully burning of any ricks of corn, hay or barns, &c. in the night time —— 478
Attainder ſhall not work corruption of blood, &c.—— The party at liberty to be tranſported for ſeven years——Felony to return before the ſeven years expired——Treble damages for maiming of cattle, or throwing down incloſures, &c. in the night-time —— 479
Three or more juſtices of the peace have liberty to enquire of the offence, and puniſh the offenders ——A witneſs refuſing to appear, ſhall be committed to priſon —— 480
Stat. 4 & 5 W. & M. c. 23 No perſon ſhall burn, from 2d Feb. to 24 June, any grig, ling, heath, furz, goſs or fern, upon pain that the offender or offenders ſhall be committed to the houſe of correction, for any time not exceeding one month, and not leſs than ten days, there to be whipt, and kept to hard labour —— ibid.
Stat. 1 Ann. ſt. 2. c. 9. Captain, maſter, &c. wilfully caſting away or burning, &c. any ſhip, ſhall ſuffer death——Offence committed on the high ſeas may be tried in any ſhire in England, in ſuch manner as by 28 H. 8. c. 15. is directed——— Perſon convicted thereof to ſuffer death without benefit of clergy —— 481
Stat. 6 Ann. c. 31. Servants who through negligence fire any houſe, &c. to forfeit 100 l. or be ſent to the workhouſe for eighteen months ibid.
Stat. 1 Geo. 1. ſt. 2. c. 48. This act is explained and amended by 6 Geo. 1. c. 16.———Timber trees, &c. maliciouſly broken down, &c. the pariſh, &c. ſhall make good the damage to the owner—— How the damages ſhall be recovered in England— How in Scotland — 481, 482
Two juſtices or quarter-ſeſſions finally to determine the offences—Offenders convicted to be ſent to the houſe of correction for three months, or to the gaol for four months, and to be whipt—— And before diſcharged ſhall find ſureties for good behaviour for two years—Setting any woods, &c. on fire, felony —— 483
Offenders in Scotland to be puniſhed as wilful fire raiſers by the act 7 Ann. c. 21. 484
Stat. 6 Geo. 1. c. 15. After 24 June 1720, owners of trees, hedges, &c. cut down, ſpoiled, &c. either by day or by night, ſhall have ſatisfaction from the inhabitants of the places in the ſame manner, as for dikes, &c. overthrown in the night, is provided by 13 Ed. 1.— 13 Ed. 1. ſt. 1. c 46. unleſs the offender be convicted in ſix months——

Two juſtices of the peace of the place, or the ſeſſions, to hear complaints and finally determine all offences againſt this act —— 484, 485
And if they convict any perſon, ſhall inflict the ſame penalties, &c. as in the act 1 Geo. 1. ſt. 2. c. 48. ——Perſons ſued may plead the general iſſue, and ſhall recover treble coſts —— 486
Stat. 10 Geo. 2. c. 32. Perſons ſetting mines of coal on fire to ſuffer death —— ibid.
Stat. 28 Geo. 2. c. 19. Perſons convicted of ſetting fire to goſs, furze, heath or fern, in chaſes or foreſts, to forfeit not leſs than 40 s. or more than 5 l.——To be levied by diſtreſs and ſale, &c. 486, 487
Burying in woollen. See Woollen Manufacture.

Butchers.

Puniſhment of butchers ſelling unwholſome fleſh 488
Stat. 4 Hen. 7. c. 3. Butchers ſhall kill no beaſts within any walled town, or Cambridge ib.
Stat. 3 Car. 1. c. 1. Butchers that ſell or kill victual on the Lord's day ſhall forfeit 6 s. 8 d. 489
After conviction, and by warrant from a juſtice, &c. the conſtables, &c. may levy the ſaid forfeitures to the uſe of the poor; or they may be recovered by ſuit —— 490
Stat. 15 Car. 2. c. 8. Penalty on butchers for ſelling live fat cattle —— 490, 491

Butter and Cheeſe.

Stat 9 Hen. 6. c. 8. Weight of a wey of cheeſe——
Stat. 3 & 4 Ed. 6. c. 21. Butter or cheeſe ſhall not be bought to be ſold again, except it be by retail in open ſhop, fair or market 491
Stat. 5 & 6 Ed 6. c. 14. Penalty on ingroſſing butter and cheeſe —— 492
Stat. 21 Jac. 1. c. 22.——Explanation of ſtat. 3 & 4 Ed 6. c 21. and 5 & 6 Ed. 6. c. 14. 492
The aforeſaid acts ſhall not extend to London, Weſtminſter or Southwark——The juſtices may reſtrain the traders in butter and cheeſe to buy thoſe commoditiesin the country —— 493, 494
Stat. 13 & 14 Car. 2. c. 26. Contents of a kilderkin, firkin and pot of butter —— 494
No old butter ſhall be mixed with new, nor whey-butter——— Cheeſemongers, and all ſellers of butter by the kilderkin, or, &c. ſhall deliver the full quantity to the retailer——None ſhall repack butter —— 495
Farmers and other ſellers ſhall ſet their marks of the weight upon good and ſufficient caſks, and their names———Potters ſhall ſet the weight of every pot burnt, and their names——How to be diſpoſed 496
Within what time ſuit muſt be begun upon this act, 497
Stat. 32 Car. 2. c. 2. Want of proviſion againſt importation of cheeſe and butter——No butter and cheeſe ſhall be imported and expoſed to ſale, ſubject to former penalties — 497
Stat. 3 Will. & Mar. c. 8. Beef, pork, butter, cheeſe, &c. may be exported cuſtom free 497
Stat. 4 Will. & Mar. c. 7. Seller of butter, &c. diſcharged from the penalty of 13 & 14 Car. 2. c. 26.—After the buyer hath bought and approved of the commodity—Penalty upon ſeller changing, &c. the commodity after ſold —— 498
The weigher of butter and cheeſe ſhall ſhip off all that belongs to the London cheeſemongers——— Fee to the weigher——Penalty upon weighers offending——Weigher, &c. ſhall keep a book of the receiving and ſhipping the butter, &c. 499
Penalty upon conviction before a juſtice——Penalty upon maſter of ſhip refuſing to take in butter, &c. —Penalties divided betwixt informer and poor—— Cheeſemongers, &c. may make uſe of their own veſſels —— 500
Warehouſes, &c. in Cheſter and Lancaſter ſaved—— Appeal lies from juſtice to ſeſſions, ſecurity being given for coſts —— 501
Stat. 8 Geo. 1. c. 27. After March 25, 1722, Micklegate, or any other place in York (at the election of the mayor, &c.) ſhall every day in the week, except Sundays, be a free market for butter——All butter brought to York to be ſold, exported, &c. ſhall be weighed, ſearched and ſealed at the ſaid market——Rates to be paid for ſearching, &c.——On payment, &c. may detain any firkin, &c.——Daily farmer, &c. ſelling or tranſporting butter before it be brought to the market to be viewed, &c. ſhall forfeit for every firkin, &c. 3 s. 4 d. —— 501, 502
To be levied by diſtreſs———One half to the poor, where, &c. the other to the informer——If any firkin, &c. of butter, ſhall be faulty in quantity or quality, the owner ſhall be liable to the forfeitures in 13 & 14 Car. 2. c. 26.——Proſecution to be in four months———The mayor to appoint the ſearcher, who ſhall be ſworn at Eaſter ſeſſions—— Perſons aggrieved may appeal to quarter-ſeſſions, whoſe determination ſhall be final 503
This act ſhall not extend to any veſſel containing only four pounds or under——General iſſue—— double coſts —— 504
Stat. 17 Geo. 2. c. 8. Borough bailiff to appoint the place where the market is to be kept. Duty for ſearching, weighing, &c. Penalty for not bringing butter to market——Officer for ſearching, &c. to be appointed by the bailiff — ib.
Stat. 3 Geo. 3 c. 20. Importation of greaſe butter permitted from Ireland duty free, for the term of five years, upon duly entering the ſame at the cuſtom houſe———Where any ſhall be ſeized as not coming within the meaning of this act, two juſtices of peace may hear and determine the matter in a ſummary way, by inſpection, and examination

nation of perſons on oath, in relation thereto——General iſſue—Treble coſts —— 505
Stat. 5 Geo. 3. c. 1. The importation of ſalted proviſions allowed from Ireland for twelve months; continued by 7 Geo. 3. c. 1. until Feb 1, 1768, upon payment of the following ſalt duties; viz. 3s. 4d. per barrel for beef or pork; 1s. 3d. per 100 weight for all dried beef, neats tongues, and hog meat; and 4d. per hundred weight for all ſalted butter; and ſo in proportion for all leſſer quantities—The duties to be paid over into the exchequer as part of the duties on ſalt 506
Proviſions landed without the ſaid duties being firſt paid, are forfeited; together with 20s per barrel for all beef and pork, and 20s. per hundred weight for all dried meat and butter ——Recovery, mitigation and application of the penalties——No drawback to be allowed on the exportation thereof elſewhere——General iſſue——Treble coſts——Conviction on ſtat. 32 Geo. 2. c. 2. ſ. 9. for importing butter into this kingdom, from Ireland, was quaſhed, becauſe the butter had been firſt exported from Ireland to Liſbon, and from Liſbon hither —— 508, 509

Buttons.

Stat. 13 & 14 Car. 2. c. 13. Foreign bone lace, &c. prohibited to be ſold, if imported from beyond ſea——Penalty——One moiety to the king, the other to the proſecutor 511
Every juſtice of peace may grant warrants to ſearch for manufactures prohibited by this act——Time limited for actions on this act 511, 512
Stat. 4 Will. & Mar. c. 10. Foreign hair buttons not to be imported —— 512
Juſtices of peace have power to ſeize 513
Stat. 10 Will. 3. c. 2. No buttons to be ſold or made of cloth, ſerge, &c. or of wood —— 514
Stat. 8 Ann. c. 6. After March 25, 1710, none ſhall make, ſell, &c. any buttons or button holes made or bound with ſerge, &c. on forfeiture of 5l. for every dozen, &c. one moiety to the queen, the other to him who will ſue, &c.——Two juſtices may by warrant levy the penalty——But perſons aggrieved may appeal to the ſeſſions, who are impowered finally to determine the matter——The appellant to pay coſts, if determined againſt him—This to be taken as a public act —— 515
Stat. 4 Geo. 1. c. 7. After March 25, 1718, no taylor, &c. ſhall make, ſell, ſet on, &c. any buttons or button-holes, made of cloth, ſerge, &c. on any cloaths whatſoever, on penalty of 40s. per dozen——By 7 Geo. 1. ſtat. 1. c. 12. ſ. 1. 40s. is laid on the wearer——Not to extend to cloaths made of velvet——Perſons dwelling in gaols, &c. offending againſt this act, ſhall be ſubject to the penalties——Proſecution in three months——Offences to be determined by juſtices of peace——On oath of one witneſs——One half of the penalty to the informer, the other to the poor —— 516
To be levied by diſtreſs, if not paid in fourteen days after conviction——For want of diſtreſs offenders to be committed for three months——Perſons aggrieved may appeal to quarter-ſeſſions, whoſe determination ſhall be final; and may allow coſts——Perſons ſued may plead the general iſſue, and ſhall recover treble coſts——Such cloaths expoſed to ſale may be ſeized——Taylors, &c. cauſing their apprentices, &c. to make cloaths contrary to this act, ſhall be ſubject to the penalties—To be taken as a public act 517, 518
Stat. 7 Geo. 1. ſt. 1. c. 12. After 29 September 1722, no perſon ſhall wear on any cloaths, buttons made of cloth, &c. on penalty of 40s. per dozen——Conviction before one juſtice of peace——Penalties to be levied by diſtreſs——One moiety to the informer, the other to the poor——Appeal to quarter-ſeſſions, whoſe judgment ſhall be final —— 518, 519
Proſecutions in one month—Not to extend to cloaths of velvet——General iſſue, &c——Treble coſts——Public act —— 520
Callico. See Exciſe.

Cambricks.

Stat. 18 Geo. 2. c. 39. No cambrick or French lawn to be worn, under penalty of 5l.——Juſtice to ſummon the party accuſed——Penalty to be levied by diſtreſs and ſale——Appeal to the quarter-ſeſſions; giving ſix days notice——Sellers of cambrick to forfeit 5l. —— 521
The perſon wearing cambricks diſcovering the ſeller, ſhall be diſcharged——No cambricks, &c. to be imported till proof made that they are the property of his majeſty's ſubjects——If any alien hath intereſt therein, proof to be made that they were ſhipped for importation before May 10, 1754——No foreign cambricks to be imported——Conditions on which cambricks, &c. may be imported, on proof that they are ſubjects property, and ſecurity given that they ſhall be exported in three years——Pieces loſt by fire, &c. not liable to the penalty —— 522, 523
Stat. 21 Geo. 2. c. 26. Perſons proſecuted for wearing cambrick, producing proof that the ſame was bought before 24 June 1748, diſcharged——The vender convicted of ſelling cambrick after 24 June 1748, to be liable——Penalties to go to the informer——Penalties incurred by a feme covert, to be levied on the goods of the huſband—Milliners making up cambricks, liable to the penalties—Quakers affirmation to be taken—Penalty of falſe affirming — 524, 525

Stat. 32 Geo. 2. c. 32. No cambricks or French lawns to be imported but in bales, &c. covered with cloth, containing each 100 whole pieces, or 200 half pieces; on penalty of forfeiture thereof ——The ſame to be imported for exportation only, and to be lodged in the king's warehouſes, and delivered out under like ſecurity and reſtrictions as prohibited Eaſt India goods——One half of the old ſubſidy payable only upon the Importation——What goods ſhall be in private cuſtody, are to be depoſited by 1 Auguſt next in the king's warehouſes; and the bonds thereupon to be delivered up, and the drawback upon exportation to be paid, and the goods not to be delivered out again but for exportation——Goods expoſed to ſale or found in private poſſeſſion, after the ſaid day, may be ſeized, and the offender to forfeit 200l. extra——In doubts concerning the ſpecies or quality, &c. of the goods, *onus probandi* to lie on the owner——Goods ſeized to be carried to the next cuſtomhouſe, and after condemnation, to be exported——Recovery and application of the penalties——Upon actions entered for pecuniary penalties, a capias is the firſt proceſs to be iſſued; and the defendant may give bail thereto, &c.——General iſſue——Treble coſts 526, 527, 528

Stat. 4 Geo. 3. c. 37. Any perſon may make and ſell cambricks and lawns in this kingdom——The king may incorporate the perſons herein named (the preſent ſubſcribers) by the name of the Engliſh Linen Company, with ſuch power of revocation as to his majeſty ſhall ſeem meet——They may chuſe directors, &c. and purchaſe lands not exceeding the value of 500l. per annum; may ſue and be ſued; and may raiſe a capital, not exceeding 100,000l. —— —— 528 to 530

Subſcribers intitled to a ſhare of capital, in proportion to their ſubſcriptions, and to be members of the corporation——Subſcriptions to be entered, ſigned and atteſted——The king may grant power to enlarge the capital——Subſcribers to pay a fourth at the time of ſubſcribing, and the remainder at ſuch calls as the Directors ſhall appoint ——Ten days notice of every call to be publiſhed in the London Gazette——On neglect of firſt payment, ſubſcriptions to be void; and on neglect of ſubſequent payments, one half of the firſt to be forfeited, &c. —— —— 530, 531

Directors to appoint a houſe in or near London or Weſtminſter to tranſact their buſineſs—— Directors to be a court, and nominate all officers and ſervants; and to take apprentices——A general annual court to be held the firſt Wedneſday in March, for electing directors ——532

Qualifications of directors and voters, and the number of votes they may have——Members voting to ſwear to their qualifications, if required—— Officers, &c. to be ſworn according to the form approved by a general court——Refuſing or neglecting to take ſuch oath for ten days, election void —— —— 533

General courts to be called on demand of certain ſubſcribers; on refuſal, they may call ſuch court themſelves——General court may diſplace directors——No member liable to any debt of the corporation further than his ſhare in the capital——If the corporate debts ſhall exceed the value of the capital undivided, or if they reduce their captital, ſo that their ſtock ſhall not be ſufficient to pay their debts; perſons receiving any dividend by which the capital ſhall be reduced, are to be perſonally liable to make good ſuch deficiency, ſo far as the dividends they ſhall have received ſhall extend —— —— 533, 534

Members not liable to bankruptcy——Nor the effects of the company, or any member's ſhare, liable to foreign attachment——Shares to be aſſignable; but not till ſeven years from the conſtitution of the corporation, unleſs in caſe of death or bankruptcy——Members ſhares, &c. to be perſonal eſtates——Forging the ſeal, &c. of the corporation, felony —— —— 535

Breaking into a ſhop, &c. with intent to ſteal or deſtroy, &c. any material or implements declared to be felony——Cambricks and lawns made in England after 10th day of May 1765, to be ſealed at both ends——Commiſſioners of exciſe, upon requeſt, to provide ſeals, and appoint officers to mark the goods; who are to be paid for marking, &c. ſuch goods before taken out of the loom—— Manufacturer to give notice to officer of the finiſhing of every piece, who is to mark the ends before taken out of the loom —— 536

Penalty on taking any piece out of the loom without giving ſuch notice, and having the ends marked, 5l. and loſs of the goods——Officer, on notice of the finiſhing any pieces of ſuch goods, forthwith to mark the beginnings and ends, and ſet a number on each piece before taken out of the loom; and to make a true entry of the number, length, and the number of threads, in the warp of each piece, on forfeiture of 10l.——Officers marking cambricks or lawns not made in England, or marking ſuch goods after taken out of the loom, to forfeit 50l. and be incapacitated——Penalty on bribing officers — — — 537, 538

Officers to tranſmit to the Commiſſioners of exciſe an annual account of all goods they ſhall ſtamp, and a copy of all entries relating thereto——Officers, &c. to deliver up ſeals, &c. to commiſſioners of exciſe, on demand, on a penalty of 200l.—— Cambricks and lawns made in England after 10 May 1764, found unſtampt, may be ſeized 538, 539

Perſons

Perſons expoſing to ſale, or having in their cuſtody for ſale, ſuch goods unſtamped, to forfeit 200l. ——Goods condemned by virtue of this act, not to be worn here, but ſold for exportation, and the buyer to give ſecurity——Perſons counterfeiting the ſeal, &c. or ſelling goods with a counterfeit ſeal, &c. guilty of felony 540
Cambricks or lawns made or begun in England before commencement of this act, to be ſealed, — 540
Seizures and penalties, how to be recovered and applied——A *capias* to iſſue for the penalties in the firſt proceſs——Defendants to give bail—— Limitation of actions —— 541
General iſſue——Treble Coſts——*Onus probandi* to lie on the claimer——Act not to extend to Scotland or Ireland——Publick Act — 542
Stat. 7 Geo. 3. c. 43. No cambrick or French lawn to be imported into any part of Great Britain, except into the port of London, after 1 July 1767; and in Britiſh ſhips navigated according to law; notice thereof alſo being firſt given to the commiſſioners of the cuſtoms, and a licence obtained for the landing; otherwiſe they are liable to forfeiture, together with the veſſel——Licence to be reſtrained to the package, and quantity, preſcribed by act 32 Geo. 2. and to be delivered up by the maſter, &c. at the time of entering and reporting the veſſels, and the goods to be warehouſed; and delivered out for exportation only —— 542, 543
No cambrick or lawn to be imported from Ireland, till the importation of cambricks and French lawns into that kingdom be prohibited by law—— Veſſels from foreign parts found hovering on the coaſt, &c. having on board any cambrick or French lawns, not licenſed, are liable to forfeiture, together with the goods——Foreign cambrick or French lawn, found in poſſeſſion of any hawker or pedlar, are liable to forfeiture, with all the other goods in the pack —— — 544
Goods ſeized to be depoſited in the king's warehouſes, and to be free to inſpection; and after condemnation to be ſtamped and ſold for exportation——
The money ariſing by the ſale to be divided between the crown and the officer——Bond to be given for the due exportation thereof; to be diſcharged upon certificate according thereto, on proof of the goods having been taken by the enemy, or loſt at ſea, otherwiſe to be put in ſuit——Where, after condemnation, officer ſhall neglect to ſue for the penalty, any perſon may ſue for and recover the ſame; to be divided between the crown and proſecutor——Cambricks fabricated in Great Britain to be ſtamped at each end——Commiſſioners of exciſe, upon requeſt made to them by the maker or proprietor of cambricks, may order ſtamps to be made; or direct and appoint officers to ſtamp the pieces, for which they are to be paid as the commiſſioners ſhall direct——Notice for the purpoſe to be given to the officers, and the goods to be ſtamped before they are cut out of the loom, on penalty of 5l. and forfeiture of the goods, —— — 544 to 546
Officer to attend, on reaſonable notice given him, in order to affix his ſtamps; and he is to make entry of the N° ſet to each piece, and the N° of yards it contains, and the N° of threads in the warp, on forfeiture of 5l. —— 546, 547.
Officers fraudulently ſtamping, or permitting to be ſo done, any goods not fabricated in Great Britain, or after their being taken out of the loom, forfeits 5l per piece, and is incapacitated; and the perſon concerned in procuring ſuch fraud to be committed; their aiders and abetters forfeit 100l. and to ſtand in the pillory; and perſons attempting by bribery, or otherwiſe, to corrupt officers, to affix the ſtamps falſly to any piece, forfeit 50l.——Officer to tranſmit to the commiſſioners of exciſe an account yearly of the number of pieces ſtampt by him; and a copy of his entries; diſtinguiſhing the manufactures; on penalty of diſmiſſion, 547, 548.
The ſtamps to be delivered upon demand or order of the commiſſioners, on forfeiture of 200l —— Goods found not legally ſtamped, are liable to forfeiture, and may be ſeized, and depoſited in the king's warehouſes; and after condemnation, publickly ſold——Money ariſing by the ſale, after deducting all charges, to be divided between the crown and the officer——Perſons expoſing to ſale unſtampt goods, forfeit 200l.——Penalty of forging or counterfeiting any ſtamp; or importing or expoſing to ſale any goods with a counterfeit ſtamp thereon, is felony — — 548, 549
The commiſſioners may order all ſuch goods made, or begun to be made in Great Britain or Ireland, before the commencement of the act, to be ſtamped, tho' taken out of the loom; and the ſame may be lawfully ſold ——Officers to make due entry of all ſuch pieces——Perſons poſſeſſed of cambricks or clear lawns, before 1 July 1767, and not duly ſtampt, may depoſit the ſame, before 1 Auguſt next, in warehouſes for exportation; upon payment of the half ſubſidy——Goods, penalties and forfeitures, in general, where not otherwiſe directed, where to be ſued and recovered — 549, 550
Produce from the ſale, after all charges, to be divided between the crown and proſecutor——Capias to iſſue upon entering an action, &c.——Defendant to give ſufficient bail thereto——General iſſue—— treble coſts — — — 551
In caſe of doubt or queſtion where the goods were manufactured, the proof to lie on the owner or claimant — — — — 551
Candles. See Exciſe.
Capias. See Proceſs.
Cards. See Stamps.

Carriers.

Who are deemed carriers——In what caſes a carrier is chargeable for a failure in his duty 552, 553
Carrier's intereſt in the things delivered to his charge 554
Stat. 3 W. & M. c. 12. Juſtices once a year to ſettle the rate of carriages, —— —— ibid.
Penalty on carriers taking above the rates 555
Stat. 21 Geo. 2. c. 28. Penalty of Waggoners demanding a greater price for carriage than allowed ——Clerks of the peace to certify yearly the rates of carriages — — —— ibid.
Caſual death. See Deodand.

Cattle.

Stat. 25 Hen. 8. c. 23. What number of ſheep may be kept——Several enormities enſuing the greedy deſire of having many ſheep —— 556, 557
No man ſhall have above 200 ſheep———Lambs under one year old ſhall not be counted ſheep——Sheep coming by executorſhip or marriage 557
Sheep bequeathed by will to a child within age——Juſtices of the peace ſhall inquire of the offenders of this act———Within what time the ſuit ſhall be commenced againſt an offender———Every perſon temporal may keep upon his inheritance, &c. as many ſheep as he will — 557, 558
Two thouſand ſheep may be kept by any perſon upon demeſns and farms———Sheep for the maintenance of his houſe above two thouſand——How fold courſes in Norfolk ſhall be uſed, and quillets of land —— —— —— 559
To which ſort of quillets this doth extend, and to which not—Six ſcore of ſheep ſhall be accounted an hundred———When lambs ſhall be taken for ſheep———No man ſhall take above two farms 560
Stat. 3 & 4 Ed. 6. c. 19. No cattle ſhall be bought but in open fair or market, but by a butcher, or for proviſion of houſhold, &c ———For what purpoſes cattle may be bought out of a fair or market——Exportation——A butcher ſhall not buy cattle and ſell them alive ——— 561
Stat. 2 & 3 Phil. & Ma. By the ſtat of 7 Jac. 1. c. 8. this ſtatute ſhall extend to grounds hereafter to be incloſed——A cow ſhall be kept for ſixty ſheep, and a calf reared for 120 ſheep——A milch cow ſhall be kept for ten beaſts fed, and for two kine a calf reared —— —— —— 562
Sheep kept, or beaſts fed to be ſpent in the owner's houſe —— — — — 563
Stat. 7 Jac. 1. c. 8. The ſtatute of 2 & 3 Phil. & M. c. 3 ſhall be extended to grounds ſince incloſed or hereafter to be incloſed — —— — 563
Stat. 18 Car. 2. c. 2. Importation of cattle a common nuſance——The penalty — — 564
Encouragement of Fiſhery———Iſle of Man 565
Stat. 20 Car. 2. c. 7. Importation of cattle from beyond ſea a nuſance — 565
All officers who have ſeized any imported cattle, ſaved harmleſs———Any perſon may ſeize imported cattle, and deliver them to the officer——— The forfeiture of ſuch as neglect to ſeize——— Ships bringing cattle, &c. from beyond ſea, ſhall be forfeited, ſeized, and ſold———The money raiſed thereby, one half to the poor, the other to the informer or ſeizor———The ſeamen to be apprehended, and all others concerned, and ſent to the common gaol ——— 566, 567
If any officer neglect to ſeize, another may take them and have the one half, giving the other to the poor ———Trial in the county where the cauſe of action ariſes———General iſſue———Defendant to have treble coſts———Proviſo to import cattle from the iſle of Man———Confederacy to elude this act incurs præmunire 567, 368, 569
Stat. 32 Car. 2. c. 2. A recital of 18 Car. c. 2.—— The benefit of it——That 18 Car. 3. c. 2. be revived and continued for ever———Not only officers, but all perſons may ſeize Iriſh cattle and goods imported———All ſeizors to have benefit ———To prevent fraudulent ſales and compoſitions — —— 569
Seizor ſhall cauſe the cattle to be killed———Hides and tallow to be the ſeizor's, the reſt to be diſtributed to the poor by the churchwardens, &c.——— Seizors, churchwardens, and overſeers on neglect, forfeit 40s. for each great cattle, and 10s. for each ſheep or ſwine———To be levied by diſtreſs and ſale of chattels by warrant of any juſtice, &c.—— For want of diſtreſs, the party to be impriſoned without bail three months———Nothing herein to hinder importation of ſtock-fiſh and eels——— Any perſon may import ſtock fiſh and live eels —Altered as to foreigners, by 1 Geo. 1. ſt. 2. c. 18. ſ 1.——Want of ſufficient proviſion againſt importation of mutton and lamb — 570
No mutton or lamb ſhall be imported———Mutton or lamb imported, or expoſed to ſale, ſubject to former penalties———For execution of 18 Car. 2. c. 2. ſeiſure to be in any pariſh into which cattle remove———Fraud in intermixing droves —— Engliſh cattle driven or intermixed with Iriſh, to be ſeized as Iriſh———Not to ſeize cattle in England before Feb 2, 1680. 571
Stat. 14 Geo. 2. c 6. Sheep ſtealing, or ſtealing any part of them, made felony, without benefit of clergy———Reward for taking and convicting ſheep ſtealers ——— 571, 572
Sheriff on default of payment, to forfeit double the ſum———Treble Coſts———Sheriffs how to be repaid ——— 572, 573

Stat. 15 Geo. 2. c. 34. To what ſorts of cattle the act ſhall extend ——— 573
Stat. 5 Geo. 3. c. 10. The free importation of cattle from Ireland allowed for the term of ſeven years; without payment of duties———General iſſue———Treble coſts ——— 574

Certiorari.

What it is, and in what caſes it lies — 575
Certiorari to remove an indictment from the quarter-ſeſſions not being iſſued till after confeſſion of the aſſault below, a procedendo was granted——— Certiorari lies to remove orders made upon the conventicle act, 22 Car. 2, c. 1. even after appeal, trial by a jury, verdict and judgment againſt the defendants, notwithſtanding the ſixth and thirteenth ſections; for the certiorari does not go to try the merits, but to ſee whether the limited juriſdiction have exceeded their bounds or not 576, 577
Stat. 21 Jac. 1. c. 8. Certiorari ſhall not be allowed, unleſs the indictee will become bound to pay coſts———Farther proviſions relating to certioraries — 578
Stat. 5 W. & M. c. 11. Certiorari in term time grantable only upon motion———Recognizance to be given for trying the iſſue next aſſizes, except in London and Weſtminſter — 579
Certiorari granted without recognizance void——— Officers proſecuting ſhall have double coſts——— Certiorari how grantable in vacation———Certiorari in Cheſter, &c. how granted———Certiorari upon repairing highways, &c. — 580
This act to continue for three years — 581
Stat. 8 & 9 W. 3. c. 33. Party proſecuting any certiorari to remove an indictment, may find two manucaptors to enter into a recognizance, &c.—— Party to appear daily in the King's Bench court until diſcharged ——— 581, 582
Stat. 5 Geo. 2 c. 19. After 24 June 1732, juſtices may rectify defects of form and appeals, and may proceed to determine them ——— 583
No certiorari to be allowed to remove juſtices orders, without a recognizance of 5ol. to proſecute to effect———On refuſal of recognizance juſtices to proceed———Recognizances to be certified into the King's Bench———Attachment for contempt ——— 584
Stat. 13 Geo. 2. c. 18. Writ of certiorari how to be applied for ——— 584
Certiorari on 5 & 6 Wil. & M. c. 11. f. 3. No coſts are payable unleſs the indictment be brought by the party grieved, only juſtices, mayors, &c. or other civil officers proſecuting as being ſuch—— Orders of juſtices not to be removed before the time of appeal expired———Certiorari to remove an order before appeal, where the time for appealing is not limited ——— 585
How far a certiorari is a ſuperſedeas to the court below ——— 586, 587
Challenge. See Jurors.
Champerty. See Maintenance.
Chance-medley. See Homicide.

Cheat.

What it is ——— ——— 587
Changing corn and giving bad inſtead of it, held indictable ——— 588
Stat. 33 Hen. 8. c. 1. The juſtices authority touching the ſaid offenders———The authority of juſtices of peace in cities, &c.———The remedy of the party aggrieved———The king's council of Calice ——— 589
Indictment for attempting to defraud a tradeſman of his goods, not ſaid with falſe tokens, and judgment arreſted——The falſe tokens muſt be ſpecified in an indictment ——— 590
Stat. 30 Geo. 2. c. 24. Perſons convicted of obtaining money or goods by falſe pretences, or of ſending threatening letters in order to extort money or goods may be puniſhed by fine and impriſonment, or by pillory, whipping, or tranſportation— Where a charge is made of any of the ſaid offences, juſtices to enquire therein upon oath, and to bind over the complainant to appear and proſecute, and his recognizance to be in proportion to the fraud 591
Penalty of 20s on pawning, exchanging, or diſpoſing of goods without leave of the owner; and on non-payment to be committed for fourteen days to hard labour, and if not paid within that time, to be whipped, on application of the proſecutor——— Application of the forfeitures — 592
Pawnbrokers to make entry of goods pawned, pledged, or exchanged, and a duplicate, if required, to be given thereof to the pawner, upon paying for the ſame———Penalty 5l on default of making ſuch entry, and giving ſuch duplicate———Where goods pawned ſhall be damaged through neglect of the pawner ——— 592, 593
Perſons buying or taking in pledge, linen or apparel, intruſted to others to waſh or mend, &c to forfeit double the ſum, and reſtore the goods———Perſons offering goods to ſale, pawn, or exchange, not giving a good account of themſelves, may be detained, and carried before a juſtice———Juſtice may commit the party — 594
The perſons detaining the party and goods, indemnified for ſo doing———Juſtice upon oath of the owner, to iſſue a warrant to ſearch the ſuſpected perſon's houſe———Upon refuſal of admittance, officer may break open the door 595
Perſons hindering ſuch ſearch, forfeit 5l.———And on non payment are to be committed to hard labour———The goods found are to be reſtored

to the owner——Goods pawned for a ſum not exceeding 10l may be recovered within two years 596
Juſtice, on complaint of pawnbroker refuſing to deliver goods, to ſummon and examine the parties: and proof being made of tender, and payment of the principal, intereſt and charges; or tender being then alſo made, and refuſed; juſtice to make an order for the immediate delivery of the goods—— On refuſal, to commit the pawnbroker till ſatisfaction be made —— 597, 598
Goods remaining unredeemed for two years, are forfeited, and may be ſold; overplus to be accounted for——Entry to be made of ſale of goods pawned for 2l. or upwards——Overplus ariſing from the ſale, to be paid on demand to the owner —— — 598
On refuſal of inſpection, or the goods being ſold for more than entered, &c. pawnbroker to forfeit treble the value —— 598, 599
Summonſes and warrants to be iſſued without fee—— Publicans permitting journeymen, &c. to game in their houſes, forfeit 40s ——And for every ſubſequent offence, 10l. to be levied by diſtreſs and ſale —— 599
On complaint of journeymen, &c. gaming in publick houſes, juſtice to iſſue his warrant for apprehending them, who upon conviction are to forfeit not exceeding 20s. nor leſs than 5s.——Offender not paying the forfeiture, to be committed to hard labour——Juſtice, upon complaint, to iſſue his warrant for bringing the offender before him 600
And may ſummon witneſſes——And if the witneſſes refuſe to give evidence, he may be committed to hard labour——Material witneſs may be bound over to give evidence before a court—— Offenders not to be admitted to bail, till due notice has been given to the proſecutor, &c.——Offender to be tried at the next ſeſſion, unleſs the court put off the trial —— 601
Inhabitants, where the offence is committed, deemed competent witneſſes —— Conviction to be drawn up in the following form——And be written on parchment, and tranſmitted to the quarter-ſeſſions to be filed——Juſtices at the quarter-ſeſſions to determine appeals——Indictment or conviction not removeable by certiorari 602
Appeal may be made to the quarter-ſeſſions; and execution reſpited, the party entering into recognizance to proſecute the appeal —— Juſtices to determine the appeal——and award coſts ——On affirmation of the judgment, appellant to pay the fine and coſts——None to be puniſhed a ſecond time for the ſame offence——General iſſue——Double coſts——Clauſe in act 24 Geo. 2. c. 44. extended to juſtices acting under this act —— 602, 603
Notice to be given to peace officer, before commencing the ſuit againſt him——Tender of amends may be made by him, and pleaded in bar of the action——If none, or inſufficient tender has been made, plaintiff, upon a verdict, to recover 604

Church and Churchyard.

Who may build churches —— 604, 605
Original of churchyards —— 606
Stat. 13 Ed. 1. ſt 2. c. 6. Fairs and markets not to be kept in churchyards —— 607
Stat. 50 Ed. 3. c. 5. None ſhall arreſt prieſts doing divine ſervice —— ib.
Stat. 1 R. 2 c. 15. Penalty for arreſting prieſts doing divine ſervice, &c. —— ib.
Stat. 5 & 6 Ed. 6. c. 4. The penalty for ſtriking or drawing a weapon in church or churchyard—— The penalty for ſmiting in a church, &c.—— The penalty for drawing or ſmiting with a weapon in the church, &c —— 608
Prohibition to the ſpiritual court to ſtay proceedings on 5 & 6 Ed. 6. c. 4. ſ. 2. which act contains three diſtinct clauſes levelled againſt three diſtinct offences in churches and churchyards, viz. 1ſt, quarrelling, chiding, or brawling by words only; 2dly, ſmiting or laying violent hands; 3dly, ſtriking with a weapon, or drawing one with intent to ſtrike; for which ſecond offence, the offender is ipſo facto to be deemed excommunicate. 1ſt, The eccleſiaſtical court may proceed upon the two firſt clauſes, and are not to be prohibited; but upon the third clauſe, there muſt be a previous conviction, and a tranſmiſſion of the ſentence, and a declaration; but if they proceed for damages on either clauſe, they ſhall be prohibited 609, 610, 611
Stat. 17 Car. 2. c. 3. Further provided for by 4 & 5 W. & M. c. 12. in what cities and towns, and how churches and chapels may be united 612
Pariſhes ſhall remain diſtinct, notwithſtanding ſuch union of churches——How and when ſuch uniting ſhall take effect——And how ſeveral patrons may preſent——How unions muſt be regiſtered——Pariſhes having 100 l. maintenance may not be united —— 613
Incumbents of ſuch united pariſhes muſt be graduates of the univerſity—Owners of impropriations may beſtow and annex maintenance to the churches where they lie——Without licence of mortmain —Parſons and vicars not having ſettled means of 100 l. per annum, may purchaſe and annex lands or rents, without licence of mortmain 614

Churchwardens.

Who, and for what purpoſe inſtituted 615
Of the right and manner of chooſing churchwardens, 615—618

Where

Where cuſtom in chooſing churchwardens cannot take place, they muſt reſort to the canon——ordinary has no juriſdiction to chooſe churchwardens, though the pariſhioners and pariſh ſhould neglect it——Who are exempted from being churchwardens —— 618
Of their intereſt in and power over the things belonging to the church —— 619
Of their power and duty in making rates and preſentments, and hindering irreverence in the church, and their power in ſeveral other matters 620, 621
Of their accounts, and of actions brought by and againſt them —— 622

Clergy.

Who, and what —— 625
Original and alteration of the privilege of clergy 625—628
In what offences clergy was allowed or not, before and by the ſtat. 25 Ed. 3. c. 4. 628—630
In what offences benefit of clergy is taken away by acts of parliament, ſubſequent to 25 Ed. 3. c. 4. 630
What perſons are or are not capable of clergy 631
At what time clergy is to be allowed, and the effect of allowing it —— 632

Clerk of the Peace.

Who —— 633
Stat. 37 Hen. 8. c. 1. Who ſhall appoint the Cuſtos Rotulorum, and clerk of the peace in every county——Inconveniencies enſuing by the ignorance of the clerk of the peace —— 633
The Cuſtos rotulorum ſhall be appointed in every county by bill ſigned with the king's own hand—The Cuſtos rotulorum ſhall appoint the clerk of the peace——The clerk of the peace may make a deputy by the aſſent of the Cuſtos rotulorum 634
Perſons having authority to aſſign Cuſtos Rotulorum or clerk of the peace —— 635
Stat. 1 Will. & Mar. c. 21. Cuſtos rotulorum how to be choſen——Clerk of the peace how to be appointed——Juſtices of the peace may diſcharge clerk of the peace——Who ſhall nominate upon ſuch vacancy —— 635
New clerk of the peace liable to penalties——Cuſtos rotulorum, &c. ſhall take no fee——Penalty on buyer and ſeller——Oath of clerk of the peace —— 636
Adjudged caſe relating to clerk of the peace 637
Stat. 22 & 23 Car. 2. c. 22. Clerk of the peace to deliver ſchedule of all fines, &c. — 638
Oath of clerk of the peace on delivering eſtreats ib.
Stat. 3 Geo. 1. c. 15. Clerk of the peace may be amerced for not returning eſtreats — 638
Stat. 10 & 11 Will. 3. c. 23 Clerk of peace to have only 2 s. for drawing an indictment ib.
Stat. 2 Geo. 2. c. 46. No clerk of the peace to act as attorney or ſolicitor —— ib.

Clocks and Watches.

Stat. 27 Geo. 2. c 7. Penalty on conviction of frauds committed by the perſons employed in the manufacture of clocks and watches——First offence —— 639
Subſequent offence——Penalty of buying, &c. any of the goods or materials, knowing the ſame to be purloined——First offence — 640
Subſequent offence——Application of the forfeitures ——Appeal to the quarter-ſeſſions——Recognizance with ſureties——Juſtices to hear and determine, and to award coſts, &c. 641, 642
Form of the conviction——Not to be removed by Certiorari, and to be tranſmitted to the next quarter ſeſſions, &c. —— 642
Juſtice, upon complaint on oath, to iſſue his warrant for apprehending any offender——And to hear and determine the matter —— 643
Cloth and Clothiers. See Woollen Manufacture.
Coaches and Chairs. See Exciſe, Hackney Coaches.

Coals and Coal Pits.

Stat. 16 Geo. 2. c. 32. Setting coal pits on fire is felony without clergy — 643
Stat. 13 Geo. 2. c. 21. Perſons drowning coal pits ſhall pay treble damages, and full coſts——Except ſuch coal pits as are their own 643, 644
Stat. 17 Geo. 2. c. 35. Three juſtices to ſet the retail price on coals in any part of England, &c. allowing a competent profit to the retailers——Power of juſtices, if the retailers refuſe to ſell as ordered——General iſſue——Treble coſts——No intereſted perſon to be concerned in ſetting a price on coals —— 644, 645
Statutes concerning the duties on coals, and for regulating the coal trade in general 646—648
Cocoa-nuts. See Exciſe.
Coffee. See Exciſe.

Coin.

What it is——Legitimation of money is part of the king's prerogative —— 648
Stat. 25 Ed. 3. ſt. 5. c. 2. Perſon counterfeiting king's money ſhall be guilty of high treaſon ib.

Stat.

Stat. 1 Mar. ſeſſ. 2. c. 6. Treaſon to forge the coin of other realms current in this realm, or the king's ſign manual, &c. —— 649

Stat. 1 & 2 Phil. & Mar. c. 11. Bringers in of counterfeit coin into this realm, ſhall be puniſhed as traitors——The manner of indictment, trial, &c. of an offender for impairing or forging of coin 649, 650

Stat. 5 Eliz. c. 11. The clipping, &c. of foreign coins for gain's ſake, ſhall be high treaſon——The prejudices redounding to the queen and the realm, by clipping, waſhing, &c. of money————The clipping, waſhing, rounding or filing of current money, ſhall be adjudged treaſon——They who have forfeitures of lands or goods by grant, ſhall in this caſe enjoy them——Theſe offences make no corruption of blood or forfeiture of dower 650, 651

Trial of a peer by peers —— 652

Stat. 14 Eliz. c. 3. It is miſpriſion of high treaſon to forge money which is not the coin of this realm, nor current therein ———— ib.

Stat. 18 Eliz. c. 1. Diminiſhing, ſcaling or lightning of any coin current within this realm, ſhall be high treaſon ———— ib.

Other undue means practiſed to falſify the money, not within the ſtrict words of the foreſaid ſtatute—— No corruption of blood or forfeiture of dower for this treaſon————Trial of a peer by his peers 653

Stat. 6 & 7 W. 3. c. 17. Penalty upon perſon ſelling or paying ſilver money for more than it is coined ——Penalty for caſting bars of ſilver or ſtamping them like Spaniſh money—Puniſhment for buying or ſelling clippings, &c. ———— 654

No perſon ſhall tranſport bullion, except it be ſtamped at Goldſmith's Hall————Bullion not ſtamped may be ſeized by cuſtom-houſe officers———— Goldſmiths only to buy and ſell bullion——What perſons may break open houſes, and ſearch for bullion —— ———— 655

Perſon, in whoſe poſſeſſion bullion is found, not proving it to be neither coin, nor clippings melted, to be impriſoned ſix months————Perſons apprehending and convicting clippers, &c ſhall, upon the judge's certificate, receive 40 l. of the ſheriff, 656

Sheriff not paying ſhall forfeit double to the apprehenders————Sheriff to be allowed the 40 l. in his accounts; and if not ſufficient in his hands, to be repaid by the treaſury——By 3 Geo. 1. c. 15. ſ. 4. the ſheriff may apply to the lord treaſurer 657

Perſon guilty on convicting two others pardoned—— Apprentice diſcovering, made a freeman———— Proof of foreign bullion to lie upon the owner, &c——Penalty upon exporter not entering in name of owner, &c————Certain quantity of bullion exported by the king ſaved —— 658

Stat. 7 & 8 W. 3. c. 19. All coining preſſes not brought into the mint to be ſeized————Penalty 658, 659

Stat. 8 & 9 W. 3. c. 26. No ſmith, &c. except employed in the mint, &c. ſhall make or mend any dye, &c. to ſtamp any current coin of gold or ſilver, nor make any edging tool, &c. nor coining preſs, nor cutting engine, nor have in their cuſtody any ſuch puncheon, &c. 659

Offenders, &c. guilty of high treaſon, and ſhall ſuffer death————Perſons conveying out of the mint any puncheon, &c. and concealing the ſame, to be guilty of high treaſon——Like penalty on perſons marking the edges of any counterfeit coin, or colouring, gilding, &c. any coin reſembling the current coin —— 660

Puncheon, dye, &c. found in the poſſeſſion of any perſon not employed in the mints, may be ſeized and produced in evidence——Counterfeit money, &c. produced in evidence or otherwiſe to be afterwards cut in pieces——Perſons blanching copper for ſale, or mixing blanched copper with ſilver, &c. or taking or paying counterfeit milled money, &c. to be guilty of felony — 661, 662

Attainder by this act not to make corruption of blood, &c.——By what evidence offenders may be convicted————Offences in 6 & 7 W. 3. c. 17. may be heard in the King's Bench, or at a gaol-delivery——Proſecution to be in three months 662

Stat. 9 & 10 W. 3. c. 24. Any perſon may cut or deface diminiſhed or counterfeit money—Perſons tendring ſuch money to bear the loſs, &c. 662, 663

Mayor, &c. to determine diſputes, and adminiſter an oath————Officers of the Exchequer, receivers general, &c. required to cut ſuch money ſo tendered, &c.—And to weigh all ſilver money received — —— 663, 664

Stat. 1 Ann. ſt. 2. c. 9 Offenders may be proſecuted in ſix months after offence — 664

Stat. 7 Ann. c. 23. After 1ſt June 1709, the lord treaſurer, &c may further iſſue, &c. 400 l. per annum for the charges of officers to be employed in proſecuting offences in counterfeiting, &c. the coin of Great Britain —— ib.

Stat. 15 Geo 2. c. 28. High treaſon to gild ſilver coin, &c—Uttering falſe money knowingly, ſix months impriſonment, and ſecurity for two years more—For the ſecond offence, two years impriſonment, and ſecurity for two years——For the third offence, felony without clergy 665, 666

Uttering falſe money twice within ten days; or having other falſe money in cuſtody, to ſuffer a year's impriſonment, &c.——Subſequent offence felony, &c.—Blood not to be corrupted—Evidence to be the ſame as now uſed againſt counterfeiting the coin—Coiners of copper money to be impriſoned two years—40 l. for convicting a perſon of treaſon and

and felony——And 10 l. for convicting a perſon of counterfeiting copper money 666, 667
Certificate to be given by the judge——Penalty on the ſheriff's not paying the reward——Sheriff to be allowed ſuch payments in his accounts, &c.——If offenders, being out of priſon, impeach two others, they ſhall be pardoned——manner of proſecuting a ſecond offence in another county —— 668
Arrears of charges of proſecution to be allowed——Future expences ſettled —— 669

Commitment.

What it is——Who are to be committed——Who may commit, and to what place 669, 670
Stat. 5 Hen. 4. c. 10 Juſtices of the peace ſhall impriſon none but in the common gaol 670
Stat. 6 Geo 1. c. 19. Juſtices of peace may commit vagrants, &c. to the common gaol or houſe of correction——Form of the commitment 671, 672
Duty of the gaoler —— 672
Stat. 3 Jac. 1. c. 10. At whoſe charge an offender ſhall be conveyed to gaol——How the charges ſhall be levied, if the priſoner refuſe to pay them ——If the offender be not able to bear his charges, the pariſhioners ſhall do it. 673
The remedy if any perſon taxed refuſe to pay——The defendant's plea in an action brought for any thing done by force of this act——The defendant ſhall recover treble damages and coſts of ſuit——The continuance of this act —— 674
Stat. 27 Geo. 2. c. 3. Offenders not having ſufficient to defray the expences of conveying them to gaol, &c.——Juſtices to grant a warrant on the treaſurer of the county for payment of the charges——Part of the act of 3 Jac. 1. c. 10. relating to taxing pariſhes for conveying offenders to gaol, repealed——How party committed may be diſcharged —— 675

Common Prayer.

Stat. 1 Eliz. c. 2. Book of Common Prayer ſhall be in full force and effect —— 676
The book of Common Prayer ſhall be uſed——The alteration of the book ſet forth——The forfeiture of thoſe which uſe any other ſervice than the book of Common Prayer——The penalty for depraving the book of Common Prayer——The penalty for the ſecond offence —— 676, 677
The penalty for the third offence——The penalty of an offender having no ſpiritual promotion——The forfeiture of them which do any thing, or ſpeak in derogation of the book of Common Prayer —— Cauſing other prayer to be ſaid or ſung——The forfeiture of an hundred marks for the firſt offence——The forfeiture of four hundred marks for the ſecond offence——The forfeiture for the third offence 678
The penalty if the party convicted do not pay his forfeiture within the time limited——Every perſon ſhall reſort to the church upon the holydays ——One juſtice may convict the offender —— The forfeiture for not coming to church——The ordinary may puniſh offenders by the cenſures of the church —— 679
Which juſtices may puniſh theſe offences——A biſhop may join with the juſtices to enquire of offenders——At whoſe charges the books of Common Prayer ſhall be gotten——Within what time offenders ſhall be impeached —— Trial of peers——Chief officers of cities and boroughs ſhall enquire of offenders——The ordinary's juriſdiction in theſe caſes —— 680
None ſhall be puniſhed above once for one offence ——Ornaments of the church and miniſters ——all laws and ordinances made for other ſervice, ſhall be void — — — 681
Stat. 13 & 14 Car. 2. c. 4. Incumbents of livings, keeping curates, ſhall read the Common Prayer once every month——The penalty and manner of conviction for not doing it. ——

Confeſſion.

What it is, and the various kinds of it 682, 683
Conies. See Game.
Conjuration. See Witchcraft.

Conſpiracy.

What it is, and how puniſhed 683, 684
Stat. 33 Ed. 1. ſt. 2. A definition of conſpirators 684
What is evidence of a conſpiracy——One conſpirator may be convicted after the other is dead——Conſpiracy may be laid without any overt act, and if one be convicted, judgment ſhall be given againſt him before the trial of the other 685
Indictment for a conſpiracy good, though the word *falſly* is omitted in the *firſt* charge of conſpiracy 689
Puniſhment for a conſpiracy — — 694.

Conſtable.

Different ſenſes of —— —— 695
Who is obliged to ſerve as conſtable, and how puniſhed for not ſerving — —— 696
Stat. 5 Hen. 8. c. 6. Warden and fellowſhip of ſurgeons exempted —— — 697
Stat 33 Hen. 8. c. 43. College of phyſicians exempted ib.
Stat. 6 W. & M. c. 4. Apothecaries not bound to ſerve — — — — ib.

Stat.

Stat. 1 W. & M. c. 18. ſect. 7. Diſſenters choſen may execute office by deputy, ibid. And by ſect. 11. of the ſaid act diſſenting preachers are exempted ib.
Stat. 10 & 11 Will. 3. c. 23. ſect. 2, 3. Proſecutor of a felon to conviction is exempted —— ib.
By whom conſtables are choſen, appointed, ſworn and removed — — — 698—701
How far a conſtable is favoured and protected in his office, or puniſhed for neglect of duty 701—703
Indictment lies againſt a conſtable for a miſdemeanor in wilfully ſuffering a looſe, idle, lewd and diſorderly woman, taken up by one of the nightly watch as a common ſtreet-walker and delivered to him for ſafe cuſtody, to eſcape out of his cuſtody before ſhe could be carried before a magiſtrate — 703
See Arreſt, Commitment, County-rate, Juſtices of Peace.

Conviction.

Juſtices of peace muſt ſtrictly purſue their powers. 705
Proceedings upon convictions muſt be in the preſent tenſe——In conviction for keeping an alſehouſe not neceſſary to ſhew he was not puniſhed under the former act———An excuſe under a proviſo need not be taken notice of in a conviction——Summons muſt precede a conviction———Appearance cures defects in ſummons —— — 706
In a conviction the evidence muſt be ſet out; and there muſt be an adjudication of the forfeiture 707 to 709

Coopers.

Stat. 8 Eliz. c. 9. Difference between the old and new prices of barrel-boards and hoops — 710
Who ſhall rate the prices of veſſels for ale and beer—Forfeiture of coopers not ſelling their veſſels at the prices rated — — — 711
Stat. 12 Car. 2. c. 24. ſect. 34. and 1 Will. ſtat. 1. c. 24. ſect. 5. What ſhall be a barrel of beer, &c. within the bills of mortality — — ib.

Corn.

Stat. 43 Eliz c. 7. Puniſhment for cutting of corn growing, or of ſuch other ſmall offences; and of a conſtable refuſing to puniſh ſuch offender, being commanded — — — — 712
Stat. 22 Car. 2. c 8. A clauſe therein repealed——Wincheſter meaſure only to be uſed——Forfeiture for offending againſt this act——Penalty enlarged by 22 & 23 C. 2. c. 12 ————The penalty of mayors and all other officers permitting the uſe of any other meaſure———Clerk of the market, &c. refuſing to ſeal or mark any meaſure, his forfeiture —Exacting fees, how puniſhable — 714
A meaſure of braſs to be chained in every public markept-place———Conſtables to ſearch if any perſons uſe other meaſures—Once puniſhed——Toll — — — 715
Stat. 22 & 23 Car. 2. c. 12. No corn or ſalt ſhall be bought by the bag, without meaſuring—Forfeiture ——The proof to lie upon the defendant, when he bought the corn———Forfeiture; how to be diſpoſed of—Where there is no clerk of the market, then what Perſons are appointed to ſeal the meaſures——This act ſhall not extend to rent corn or tithe corn — — — 716
Stat. 5 Geo. 2. c. 12. After 1 June 1732, juſtices at quarter ſeſſions to charge the grand jury———Who are to preſent on oath the market prices of Engliſh corn———Preſentments to be made in open court, certified to collector of cuſtoms, and hung up at the cuſtom-houſes for publick view ——Duties on foreign corn to be paid according to the prices in the certificates —— 717
Not to extend to London———No warrant, &c. to be granted for tranſporting any foreign corn to any other Engliſh haven after importation——Foreign corn ſo tranſported forfeited, and 20s. per buſhel ———Veſſel and tackle forfeited———Three months impriſonment on aſſiſting in ſuch exportation ——— — 718
Stat. 11 Geo. 2. c. 22. Perſons uſing violence to hinder the purchaſe or carriage of corn———to be impriſoned and publickly whipt 719
Committing the like offences a ſecond time, deſtroying granaries or the corn therein, or in veſſels, &c. felony———Proviſoes ———Satisfaction for ſuch damages recoverable from the hundred (not exceeding 100l.) as in caſes of robbery. —— 720

Coroner.

Who, and the antiquity of his office —— 722
Stat. 4 Ed. 1. ſt. 2. Of what things a coroner ſhall inquire——Murder———Inquiry of the offenders ——Man found ſlain—Murderer found culpable 723
Perſons drowned or ſuddenly dead———Appeal of wounds of maim———Principal and acceſſary——Deodands——Wreck of the ſea——Suſpected perſons ——— ——— 724
Stat. 28 Ed. 3. c. 6. Who ſhall be coroners, and by whom, and when they ſhall be choſen —— 725
Stat. 25 G. 2. c 29 Coroner to be paid 20s. for every inquiſition taken in any townſhip contributing to the county rates (except on bodies dying in gaol) ——and 9d for every mile he ſhall be obliged to travel, to be paid out of the county rates 725
And for every inquiſition on bodies dying in gaol, as the juſtices ſhall think fit; and for inquiſitions on a body ſlain 13s. 4d. over and above——Coroner taking

taking more, guilty of extortion——Coroners for particular places excepted ——— 726
Coroner convicted of misdemeanor in his office, to be moved———Inquisition on an untimely death may be taken by justices of gaol-delivery, oyer and terminer, or of the peace, if omitted by the coroner ——— ——— 727
Leave to take new inquisition on view of the body 728

Cottage.

Stat. 31 Eliz. c. 7. Penalty for building a cottage without four acres of land to it, and the like for placing or suffering inmates———The forfeiture for continuing of a new cottage —— 729
More families than one may be placed in one cottage, &c.———The penalty for receving of an inmate———Who may hear and determine the offences aforesaid, and by what means——— Cottages in cities or market towns or for workmen in mineral works, quarries, &c ———Cottages to which this statute shall not extend 730 to 732
Counterfeit. See **Coin, Cheat, Forgery.**

County-Court.

What, and antiquity thereof ——— 733
Stat. 9 Hen. 3. c. 35. County-court to be held from month to month ——— ibid
Stat. 52 Hen. 3. c. 10. Archbishops, &c. shall not come to the sheriffs court ——— ibid.
Stat. 3 Ed. 1. c. 33. Sheriffs not to suffer barretors to maintain pleas in the counties ——— ibid.
Stat. 13 Ed. 1. c. 13. Sheriffs to make inquests by lawful men ——— 734
Stat. 1 Ed. 3. c. 17. Sheriffs to take indictments by roll indented ——— ibid.
Stat. 31 Ed. 3. st. 1. c. 15. Every sheriff shall make his turn once in the month of Easter ib.
Stat. 19 Hen. 7. c. 24. Shire court of Sussex where to be held ——— ib.
Stat. 2 & 3 Ed. 6. c. 25. s. 2. County courts shall be kept every month, and no otherwise ib.
Stat. 7 & 8 Will. 3. c. 25. s. 9. County court for York when to be held ——— ib.

County Rate.

Preamble, reciting the acts 22 Hen. 8. c 5. 1 Ann. stat. 1. c. 18. 11 & 12 Will. 3. c. 19. 7 Jac. 1. c. 4. 43 Eliz. c. 2. 14 Eliz. c. 5. 19 Car. 2. c. 4. 12 Ann. st. 2. c. 23. 734—737
After 1 Sept. 1739, Justices to make from time to time one general assessment, instead of the several rates appointed by several acts———To be paid out of the poor's rates of every parish to the high-constable, or to be levied on them by distress——Where there is no poor's rate, the petty constable of the place to levy and pay the county rate 737, 738
Counties excepted from paying the rate of this act out of the poor's rate——Proviso, in favour of places heretofore not paying all, or any county rates 739
How constables to pay the monies to the treasurers appointed by the quarter-sessions, and they to whomsoever the justices shall direct——Treasurers to keep books of entries, and to account upon oath ———High constable's charge — 740
Penalty on default———Their and the treasurers vouchers to be kept among the records of the county, &c.———What shall be their respective discharge——The condition on which new rates are to be made —— 741
Treasurers to be continued or removed at the will of the quarter-sessions———Parishes over-rated, to appeal to the said sessions———Justices to make but one rate for Middlesex———Proviso as to the house of correction at Westminster 742
Justices impowered to oblige collectors to account with them, and to order the monies unapplied to be paid to the treasurer———No action against persons collecting on rate discharged by certiorari, &c.——But the persons over-rated to be relieved 743
Such collectors obliged to payment——Justices of Middlesex to have the same power at their general as their quarter-sessions——Writ of Certiorari on what terms issuable——Manner of the payment of the King's Bench and Marshalsea money 744
Court Leet. See **Leet.**
Curriers, See **Leather.**
Customs. See **Excise and Customs.**
Custos Rotulorum. See **Clerk of the Peace.**
Cutting out Tongues. See **Maim.**
Cyder. See **Excise.**
Deer. See **Game.**
Defamation. See **Slander.**

Demurrer.

What it is———Consequence of demurring in criminal cases — 746, 747

Deodand.

What it is, and how first introduced 747, 750

Dissenters.

Stat. 1 Will. & Mar. c. 18. The several laws against dissenters repealed ——— 750, 751
Taking declaration to be registered———Fee for register and certificate——Persons convicted, &c. taking the oaths, &c. shall be discharged 751

Private meetings excluded——Tithes ſaved——— Officers ſcrupling oaths, &c. allowed to act by deputy——Perſons in orders how exempted, &c. 752

Taking the oaths, &c. to be regiſtered——Meeting door to be unlocked——Anabaptiſts——Teachers exempt from offices ——— 753

Juſtice of peace may tender the oaths, &c.——— Penalty for refuſing——Quakers how exempted— Declaration of fidelity———Profeſſion 754

How purged after refuſal of the oaths———Laws for divine ſervice in force———Papiſts, &c. excepted 755

Diſturbers of religious worſhip how puniſhed——— Place for worſhip to be certified 756

Stat. 10 Ann. c. 2. If any diſſenter, not in holy orders, &c. who would have been entitled to the benefit of that act, if he had taken the oaths, &c. is or ſhall be proſecuted upon any penal ſtatute, &c. ſhall, during ſuch proſecution, take the oaths, &c. or, being a quaker, ſhall make the declaration, &c. he ſhall be intitled to the benefit of the ſaid act—— A diſſenting teacher, qualified according to the ſaid act, may officiate in any other county than where he was qualified———Such teacher to produce a certificate, &c. of his having qualified himſelf, &c. and ſhall, if required, make the declaration, &c. 757

Diſtreſs.

What it is —— 758

Stat. 2 Will. & Mar. ſeſſ. 1. c. 5. Goods diſtrained for rent may be appraiſed and ſold—Farther provided for by 8 Ann. c. 14.———Corn looſe, &c. may be detained and ſold ——— 758

Treble damages for pound breach—Double damages and coſts againſt wrongful diſtrainer 759

After the firſt of May 1710, no goods, &c. ſhall be taken in execution, &c. unleſs the party before removal of the goods, &c. pay the landlord the rent due—Provided it amount to no more than one year's rent——The ſheriff, &c. to levy the rent as well as the execution money——If after the ſaid firſt of May, and leſſee, &c. ſhall fraudulently carry his goods, &c. from the premiſſes, &c. the leſſor, &c. may within five days after ſeize ſuch goods, &c. and ſell the ſame as if they had been diſtrained on the premiſſes——Proviſo, ſuch leſſor, &c. ſhall not ſeize any goods, &c. which ſhall be bona fide ſold before ſuch ſeizure — 760

After the ſaid firſt of May an action of debt may be brought againſt tenant for life, for rent due upon a leaſe for life, in the ſame manner as if it were due on a leaſe for years——Diſtreſs liable to ſuch ſales, and to be ſo diſtributed, as by the act 2 W. & M. ſeſſ. 1. c. 5. is directed——Rent in arrear upon a leaſe for life, &c. expired, may be diſtrained for after the determination of the ſaid leaſe, in the ſame manner as if the leaſe had not been ended——— Diſtreſs to be within ſix months after the end of the leaſe, and during the landlord's title and tenant's poſſeſſion——This act ſhall not hinder the queen, &c. to levy, &c. any debts, fines, &c. due to the crown — —— 760, 761

Perſons holding over lands, &c. after expiration of leaſes, to pay double the yearly value—on half a year's rent in arrear, landlord may enter, ſerving a declaration of ejectment — 762

When leſſor in ejectment may recover judment, &c. ——Not to bar the right of any mortgagee——— Leſſees filing bill in equity, not to have an injunction againſt proceeding at law, &c. — 763

Tenant paying all rent with coſts, proceeding to ceaſe——Method of recovering ſeck-rents, &c. 764

Chief leaſes may be renewed without ſurrendering all the under leaſes——Not to extend to Scotland 765

Stat. 11 Geo. 2. c. 19. Landlords may diſtrain and ſell goods fraudulently carried off the premiſſes, unleſs ſold to any perſon not privy to the fraud ——Penalty on the ſaid fraud, or aſſiſting thereto ——If the goods exceed not the value of 50l. landlords to have recourſe to two juſtices 766

Appeal from thence to the quarter-ſeſſions——— The two juſtices order, on ſuch appeal, not to be executed———Landlords may break open houſes to ſeize goods fraudulently ſecured therein; and may diſtrain ſtock of cattle on the premiſſes, for arrears of rent———Tenants to have notice of the place where the diſtreſs is lodged——Diſtreſs of corn, &c. to ceaſe, if rent be paid before it be cut ——— ——— 767, 768

Diſtreſſes may be ſecured and ſold on the premiſſes ——— 769

Attornment of tenants void——Exception——— Againſt tenants ſecreting ejectments—— Landlord impowered to make himſelf defendant by joining with the tenant, &c. ——— 770

Rents how to be recovered where the demiſes are not by deed———Rents recoverable from under-tenant, where tenants for life die before the leaſe is expired———Proviſion for landlords where tenants deſert the premiſſes ——— 771

Tenants may appeal from the juſtices——Tenants holding premiſſes, after the time they notify for quitting them, to pay double rent for ſuch time 772

Diſtreſs for rent not unlawful, &c. for any irregularity in the diſpoſition of them; nor tenants to recover by action on tender of amends———In actions againſt perſons intitled to rents, the defendant may plead the general iſſue, &c. 773

Defendants in replevin to make conuzance that the plaintiff held the premiſſes at a certain rent, &c.—To prevent vexatious replevins ——— 774
Stat. 27 Geo. 2. c. 20. Juſtices to limit in their warrants of diſtreſs the time for ſale of the diſtreſs, not leſs than four, nor more than eight days——— Officer to deduct the charge of keeping and ſelling ———Overplus to be returned———Proviſions relating to tithes in 7 & 8 Will. 3. c. 34. and 1 Geo. 1. c. 6. not altered ——— 775
Order of two juſtices on act 11 Geo. 2. c. 19. ſect. 3. ibid.
Order of two juſtices on act 11 Geo. 2. c. 19. 777
Tenant in tail is within 11 Geo. 2. c. 19. ſect. 15. 779
What things may be diſtrained for a poor rate, &c. 780, &c.
Diſtringas. See Proceſs.
Divine ſervice. See Publick Worſhip.
Dogs. See Game.
Doors breaking open. See Arreſt.
Dower. See Forfeiture.
Drover of cattle. See Badge.
Drunkenneſs, See Alehouſes.
Duelling. See Homicide.
Dyers. See Woollen Manufacture.

FINIS.

UC SOUTHERN REGIONAL LIBRARY FAC
D 000 007 195

